Appendix A
40 CFR part 68

shall be paid to the State or local agent.

§ 67.43 Procedure where a formal State hearing was held.

(a) In reviewing a penalty calculation for which a hearing conforming to § 67.11(b)(4) was held, the Administrator may invite comment on issues identified by him as relevant to his review and shall propose or make findings as to the correctness of the determination and shall evaluate the accuracy and adequacy of the material transmitted pursuant to § 67.11(b)(5).

(b) The Administrator shall notify all participants in the State hearing of his findings and conclusions. If the Administrator finds that the State determination conformed to the requirements of the Act, part 66 (as modified by § 67.11), the Technical Support Document, and the Instruction Manual, his determination shall constitute a final action pursuant to section 120. If the Administrator finds that the State determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or to the Technical Support Document or Instruction Manual, the findings shall constitute proposed findings, and the notice shall invite participants to file exceptions to his proposed findings and, if necessary, schedule a time for argument.

(c) Within 60 days of receipt of any briefs or exceptions or after oral argument, the Administrator shall affirm, modify, or revoke his proposed findings that the State or local agent's determination did not conform to the requirements of the Act or of part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual. The decision shall be in writing. Notice and a copy of the decision, which shall constitute final administrative action by EPA pursuant to section 120, shall be provided to the source owner or operator and to all other participants in the State hearing.

(d) If the Administrator finds that deficiencies in the State or local agent's hearing record prevent him from determining whether the State or local agent's determination conformed to the requirements of the Act and part 66 (as modified by § 67.11) or the Technical Support Document or Instruction Manual, he shall notify the State or local agent of his decision and specify what dificiencies exist and schedule a hearing in accordance with subpart F of part 66. Such notice shall operate to withdraw EPA's delegation of authority to the State or local agent over the facility in question unless the State or local agent within 15 days schedules a supplemental hearing to correct the deficiencies.

(e) Unless otherwise provided in the Administrator's notice to the State or local agent, any noncompliance penalties owed by the source owner or operator shall be paid to the State or local agent.

APPENDIX A TO PART 67—TECHNICAL SUPPORT DOCUMENT

NOTE: EPA will make copies of appendix A available from: Director, Stationary Source Compliance Division, EN–341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

APPENDIX B TO PART 67—INSTRUCTION MANUAL

NOTE: EPA will make copies of appendix B available from: Director, Stationary Source Compliance Division, EN–341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

APPENDIX C TO PART 67—COMPUTER PROGRAM

NOTE: EPA will make copies of appendix C available from: Director, Stationary Source Compliance Division, EN–341, 401 M Street, SW., Washington, DC 20460.

[54 FR 25259, June 20, 1989]

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

Subpart A—General

Subpart B—Hazard Assessment

AUTHORITY: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

SOURCE: 59 FR 4493, Jan. 31, 1994, unless otherwise noted.

Subpart A—General

§ 68.1 Scope.

This part sets forth the list of regulated substances and thresholds, the petition process for adding or deleting substances to the list of regulated substances, the requirements for owners or operators of stationary sources concerning the prevention of accidental releases, and the State accidental release prevention programs approved under section 112(r). The list of substances, threshold quantities, and accident prevention regulations promulgated under this part do not limit in any way the general duty provisions under section 112(r)(1).

§ 68.2 Stayed provisions.

(a) Notwithstanding any other provision of this part, the effectiveness of the following provisions is stayed from March 2, 1994 to December 22, 1997.

(1) In Sec. 68.3, the definition of ''stationary source,'' to the extent that such definition includes naturally occurring hydrocarbon reservoirs or transportation subject to oversight or regulation under a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. 60105;

(2) Section 68.115(b)(2) of this part, to the extent that such provision requires an owner or operator to treat as a regulated flammable substance:

(i) Gasoline, when in distribution or related storage for use as fuel for internal combustion engines;

(ii) Naturally occurring hydrocarbon mixtures prior to entry into a petroleum refining process unit or a natural gas processing plant. Naturally occurring hydrocarbon mixtures include any of the following: condensate, crude oil, field gas, and produced water, each as defined in paragraph (b) of this section;

(iii) Other mixtures that contain a regulated flammable substance and

that do not have a National Fire Protection Association flammability hazard rating of 4, the definition of which is in the NFPA 704, Standard System for the Identification of the Fire Hazards of Materials, National Fire Protection Association, Quincy, MA, 1990, available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101; and

(3) Section 68.130(a).

(b) From March 2, 1994 to December 22, 1997, the following definitions shall apply to the stayed provisions described in paragraph (a) of this section:

Condensate means hydrocarbon liquid separated from natural gas that condenses because of changes in temperature, pressure, or both, and remains liquid at standard conditions.

Crude oil means any naturally occurring, unrefined petroleum liquid.

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

Natural gas processing plant means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of natural gas liquids to natural gas products, or both. A separator, dehydration unit, heater treater, sweetening unit, compressor, or similar equipment shall not be considered a ''processing site'' unless such equipment is physically located within a natural gas processing plant (gas plant) site.

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in the Standard Industrial Classification code for petroleum refining (2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; separating petroleum; or separating, cracking, reacting, or reforming intermediate petroleum streams. Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing, hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

[59 FR 4493, Jan. 31, 1994, as amended at 61 FR 31731, June 20, 1996]

§ 68.3 Definitions.

For the purposes of this part:

Accidental release means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

Act means the Clean Air Act as amended (42 U.S.C. 7401 *et seq.*)

Administrative controls mean written procedural mechanisms used for hazard control.

Administrator means the administrator of the U.S. Environmental Protection Agency.

AIChE/CCPS means the American Institute of Chemical Engineers/Center for Chemical Process Safety.

API means the American Petroleum Institute.

Article means a manufactured item, as defined under 29 CFR 1910.1200(b), that is formed to a specific shape or design during manufacture, that has end use functions dependent in whole or in part upon the shape or design during end use, and that does not release or otherwise result in exposure to a regulated substance under normal conditions of processing and use.

ASME means the American Society of Mechanical Engineers.

CAS means the Chemical Abstracts Service.

Catastrophic release means a major uncontrolled emission, fire, or explosion, involving one or more regulated substances that presents imminent and substantial endangerment to public health and the environment.

Classified information means ''classified information'' as defined in the Classified Information Procedures Act, 18 U.S.C. App. 3, section 1(a) as ''any information or material that has been determined by the United States Government pursuant to an executive order, statute, or regulation, to require

protection against unauthorized disclosure for reasons of national security.''

Covered process means a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115.

Designated agency means the state, local, or Federal agency designated by the state under the provisions of § 68.215(d) .

DOT means the United States Department of Transportation.

Environmental receptor means natural areas such as national or state parks, forests, or monuments; officially designated wildlife sanctuaries, preserves, refuges, or areas; and Federal wilderness areas, that could be exposed at any time to toxic concentrations, radiant heat, or overpressure greater than or equal to the endpoints provided in § 68.22(a) , as a result of an accidental release and that can be identified on local U. S. Geological Survey maps.

Hot work means work involving electric or gas welding, cutting, brazing, or similar flame or spark-producing operations.

Implementing agency means the state or local agency that obtains delegation for an accidental release prevention program under subpart E, 40 CFR part 63. The implementing agency may, but is not required to, be the state or local air permitting agency. If no state or local agency is granted delegation, EPA will be the implementing agency for that state.

Injury means any effect on a human that results either from direct exposure to toxic concentrations; radiant heat; or overpressures from accidental releases or from the direct consequences of a vapor cloud explosion (such as flying glass, debris, and other projectiles) from an accidental release and that requires medical treatment or hospitalization.

Major change means introduction of a new process, process equipment, or regulated substance, an alteration of process chemistry that results in any change to safe operating limits, or other alteration that introduces a new hazard.

Mechanical integrity means the process of ensuring that process equipment is fabricated from the proper materials of construction and is properly installed, maintained, and replaced to prevent failures and accidental releases.

Medical treatment means treatment, other than first aid, administered by a physician or registered professional personnel under standing orders from a physician.

Mitigation or mitigation system means specific activities, technologies, or equipment designed or deployed to capture or control substances upon loss of containment to minimize exposure of the public or the environment. Passive mitigation means equipment, devices, or technologies that function without human, mechanical, or other energy input. Active mitigation means equipment, devices, or technologies that need human, mechanical, or other energy input to function.

NFPA means the National Fire Protection Association.

Offsite means areas beyond the property boundary of the stationary source, and areas within the property boundary to which the public has routine and unrestricted access during or outside business hours.

OSHA means the U.S. Occupational Safety and Health Administration. Owner or operator means any person who owns, leases, operates, controls, or supervises a stationary source.

Population means the public.

Process means any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Public means any person except employees or contractors at the stationary source.

Public receptor means offsite residences, institutions (e.g., schools, hospitals), industrial, commercial, and office buildings, parks, or recreational areas inhabited or occupied by the public at any time without restriction by the stationary source where members of the public could be exposed to toxic

concentrations, radiant heat, or overpressure, as a result of an accidental release.

Regulated substance is any substance listed pursuant to section 112(r)(3) of the Clean Air Act as amended, in § 68.130.

Replacement in kind means a replacement that satisfies the design specifications.

RMP means the risk management plan required under subpart G of this part.

SIC means Standard Industrial Classification.

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading, or unloading. The term stationary source does not apply to transportation, including the storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part, provided that such transportation is regulated under 49 CFR parts 192, 193, or 195. Properties shall not be considered contiguous solely because of a railroad or gas pipeline right-of-way.

Threshold quantity means the quantity specified for regulated substances pursuant to section 112(r)(5) of the Clean Air Act as amended, listed in § 68.130 and determined to be present at a stationary source as specified in § 68.115 of this part.

Typical meteorological conditions means the temperature, wind speed, cloud cover, and atmospheric stability class, prevailing at the site based on data gathered at or near the site or from a local meteorological station.

Vessel means any reactor, tank, drum, barrel, cylinder, vat, kettle, boiler, pipe, hose, or other container.

Worst-case release means the release of the largest quantity of a regulated substance from a vessel or process line failure that results in the greatest distance to an endpoint defined in § 68.22(a).

[59 FR 4493, Jan. 31, 1994, as amended at 61 FR 31717, June 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 31717, June 20, 1996, § 68.3 was amended by adding the definitions for *Act, Administrative controls, AIChE/CCPS, API, ASME, Catastrophic release, Classified information, Covered process, Designated agency, Environmental receptor, Hot work, Implementing agency, Injury, Major change, Mechanical integrity, Medical treatment, Mitigation or mitigation system, NFPA, Offsite, OSHA, Population, Public, Public receptor, Replacement in kind, RMP, SIC, Typical meterological conditions,* and *Worst-case release*, effective Aug. 19, 1996.

§ 68.10 Applicability.

(a) An owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process, as determined under § 68.115, shall comply with the requirements of this part no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under § 68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(b) Program 1 eligibility requirements. A covered process is eligible for Program 1 requirements as provided in § 68.12(b) if it meets all of the following requirements:

(1) For the five years prior to the submission of an RMP, the process has not had an accidental release of a regulated substance where exposure to the substance, its reaction products, overpressure generated by an explosion involving the substance, or radiant heat generated by a fire involving the substance led to any of the following offsite:

(i) Death;

(ii) Injury; or

(iii) Response or restoration activities for an exposure of an environmental receptor;

(2) The distance to a toxic or flammable endpoint for a worst-case release assessment conducted under Subpart B

and §68.25 is less than the distance to any public receptor, as defined in §68.30; and

(3) Emergency response procedures have been coordinated between the stationary source and local emergency planning and response organizations.

(c) Program 2 eligibility requirements. A covered process is subject to Program 2 requirements if it does not meet the eligibility requirements of either paragraph (b) or paragraph (d) of this section.

(d) Program 3 eligibility requirements. A covered process is subject to Program 3 if the process does not meet the requirements of paragraph (b) of this section, and if either of the following conditions is met:

(1) The process is in SIC code 2611, 2812, 2819, 2821, 2865, 2869, 2873, 2879, or 2911; or

(2) The process is subject to the OSHA process safety management standard, 29 CFR 1910.119.

(e) If at any time a covered process no longer meets the eligibility criteria of its Program level, the owner or operator shall comply with the requirements of the new Program level that applies to the process and update the RMP as provided in §68.190.

[61 FR 31717, June 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 31717, June 20, 1996, §68.10 was added, effective Aug. 19, 1996.

§68.12 General requirements.

(a) General requirements. The owner or operator of a stationary source subject to this part shall submit a single RMP, as provided in §§68.150 to 68.185. The RMP shall include a registration that reflects all covered processes.

(b) Program 1 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process eligible for Program 1, as provided in §68.10(b), shall:

(1) Analyze the worst-case release scenario for the process(es), as provided in §68.25; document that the nearest public receptor is beyond the distance to a toxic or flammable endpoint defined in §68.22(a); and submit in the RMP the worst-case release scenario as provided in §68.165;

(2) Complete the five-year accident history for the process as provided in §68.42 of this part and submit it in the RMP as provided in §68.168;

(3) Ensure that response actions have been coordinated with local emergency planning and response agencies; and

(4) Certify in the RMP the following: ''Based on the criteria in 40 CFR 68.10, the distance to the specified endpoint for the worst-case accidental release scenario for the following process(es) is less than the distance to the nearest public receptor: [list process(es)]. Within the past five years, the process(es) has (have) had no accidental release that caused offsite impacts provided in the risk management program rule (40 CFR 68.10(b)(1)). No additional measures are necessary to prevent offsite impacts from accidental releases. In the event of fire, explosion, or a release of a regulated substance from the process(es), entry within the distance to the specified endpoints may pose a danger to public emergency responders. Therefore, public emergency responders should not enter this area except as arranged with the emergency contact indicated in the RMP. The undersigned certifies that, to the best of my knowledge, information, and belief, formed after reasonable inquiry, the information submitted is true, accurate, and complete. [Signature, title, date signed].''

(c) Program 2 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 2, as provided in §68.10(c), shall:

(1) Develop and implement a management system as provided in §68.15;

(2) Conduct a hazard assessment as provided in §§68.20 through 68.42;

(3) Implement the Program 2 prevention steps provided in §§68.48 through 68.60 or implement the Program 3 prevention steps provided in §§68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§68.90 to 68.95; and

(5) Submit as part of the RMP the data on prevention program elements for Program 2 processes as provided in §68.170.

(d) Program 3 requirements. In addition to meeting the requirements of paragraph (a) of this section, the owner or operator of a stationary source with a process subject to Program 3, as provided in § 68.10(d) shall:

(1) Develop and implement a management system as provided in § 68.15;

(2) Conduct a hazard assessment as provided in §§ 68.20 through 68.42;

(3) Implement the prevention requirements of §§ 68.65 through 68.87;

(4) Develop and implement an emergency response program as provided in §§ 68.90 to 68.95 of this part; and

(5) Submit as part of the RMP the data on prevention program elements for Program 3 processes as provided in § 68.175.

[61 FR 31718, June 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 31718, June 20, 1996, § 68.12 was added, effective Aug. 19, 1996.

§ 68.15 Management.

(a) The owner or operator of a stationary source with processes subject to Program 2 or Program 3 shall develop a management system to oversee the implementation of the risk management program elements.

(b) The owner or operator shall assign a qualified person or position that has the overall responsibility for the development, implementation, and integration of the risk management program elements.

(c) When responsibility for implementing individual requirements of this part is assigned to persons other than the person identified under paragraph (b) of this section, the names or positions of these people shall be documented and the lines of authority defined through an organization chart or similar document.

[61 FR 31718, June 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 31718, June 20, 1996, § 68.15 was added, effective Aug. 19, 1996.

Subpart B—Hazard Assessment

SOURCE: 61 FR 31718, June 20, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 31718, June 20, 1996, subpart B was added, effective Aug. 19, 1996.

§ 68.20 Applicability.

The owner or operator of a stationary source subject to this part shall prepare a worst-case release scenario analysis as provided in § 68.25 of this part and complete the five-year accident history as provided in § 68.42. The owner or operator of a Program 2 and 3 process must comply with all sections in this subpart for these processes.

§ 68.22 Offsite consequence analysis parameters.

(a) Endpoints. For analyses of offsite consequences, the following endpoints shall be used:

(1) Toxics. The toxic endpoints provided in appendix A of this part.

(2) Flammables. The endpoints for flammables vary according to the scenarios studied:

(i) Explosion. An overpressure of 1 psi.

(ii) Radiant heat/exposure time. A radiant heat of 5 kw/m² for 40 seconds.

(iii) Lower flammability limit. A lower flammability limit as provided in NFPA documents or other generally recognized sources.

(b) Wind speed/atmospheric stability class. For the worst-case release analysis, the owner or operator shall use a wind speed of 1.5 meters per second and F atmospheric stability class. If the owner or operator can demonstrate that local meteorological data applicable to the stationary source show a higher minimum wind speed or less stable atmosphere at all times during the previous three years, these minimums may be used. For analysis of alternative scenarios, the owner or operator may use the typical meteorological conditions for the stationary source.

(c) Ambient temperature/humidity. For worst-case release analysis of a regulated toxic substance, the owner or operator shall use the highest daily maximum temperature in the previous three years and average humidity for the site, based on temperature/humidity data gathered at the stationary source or at a local meteorological station; an owner or operator using the RMP Offsite Consequence Analysis Guidance may use 25°C and 50 percent humidity as values for these variables. For analysis of alternative scenarios, the owner or operator may use typical

temperature/humidity data gathered at the stationary source or at a local meteorological station.

(d) Height of release. The worst-case release of a regulated toxic substance shall be analyzed assuming a ground level (0 feet) release. For an alternative scenario analysis of a regulated toxic substance, release height may be determined by the release scenario.

(e) Surface roughness. The owner or operator shall use either urban or rural topography, as appropriate. Urban means that there are many obstacles in the immediate area; obstacles include buildings or trees. Rural means there are no buildings in the immediate area and the terrain is generally flat and unobstructed.

(f) Dense or neutrally buoyant gases. The owner or operator shall ensure that tables or models used for dispersion analysis of regulated toxic substances appropriately account for gas density.

(g) Temperature of released substance. For worst case, liquids other than gases liquified by refrigeration only shall be considered to be released at the highest daily maximum temperature, based on data for the previous three years appropriate for the stationary source, or at process temperature, whichever is higher. For alternative scenarios, substances may be considered to be released at a process or ambient temperature that is appropriate for the scenario.

§68.25 Worst-case release scenario analysis.

(a) The owner or operator shall analyze and report in the RMP:

(1) For Program 1 processes, one worst-case release scenario for each Program 1 process;

(2) For Program 2 and 3 processes:

(i) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint provided in appendix A of this part resulting from an accidental release of regulated toxic substances from covered processes under worst-case conditions defined in §68.22;

(ii) One worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint defined in §68.22(a) resulting from an accidental release of regulated flammable substances from covered processes under worst-case conditions defined in §68.22; and

(iii) Additional worst-case release scenarios for a hazard class if a worst-case release from another covered process at the stationary source potentially affects public receptors different from those potentially affected by the worst-case release scenario developed under paragraphs (a)(2)(i) or (a)(2)(ii) of this section.

(b) *Determination of worst-case release quantity.* The worst-case release quantity shall be the greater of the following:

(1) For substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity; or

(2) For substances in pipes, the greatest amount in a pipe, taking into account administrative controls that limit the maximum quantity.

(c) *Worst-case release scenario—toxic gases.* (1) For regulated toxic substances that are normally gases at ambient temperature and handled as a gas or as a liquid under pressure, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is released as a gas over 10 minutes. The release rate shall be assumed to be the total quantity divided by 10 unless passive mitigation systems are in place.

(2) For gases handled as refrigerated liquids at ambient pressure:

(i) If the released substance is not contained by passive mitigation systems or if the contained pool would have a depth of 1 cm or less, the owner or operator shall assume that the substance is released as a gas in 10 minutes;

(ii) If the released substance is contained by passive mitigation systems in a pool with a depth greater than 1 cm, the owner or operator may assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously

to form a liquid pool. The volatilization rate (release rate) shall be calculated at the boiling point of the substance and at the conditions specified in paragraph (d) of this section.

(d) *Worst-case release scenario—toxic liquids.* (1) For regulated toxic substances that are normally liquids at ambient temperature, the owner or operator shall assume that the quantity in the vessel or pipe, as determined under paragraph (b) of this section, is spilled instantaneously to form a liquid pool.

(i) The surface area of the pool shall be determined by assuming that the liquid spreads to 1 centimeter deep unless passive mitigation systems are in place that serve to contain the spill and limit the surface area. Where passive mitigation is in place, the surface area of the contained liquid shall be used to calculate the volatilization rate.

(ii) If the release would occur onto a surface that is not paved or smooth, the owner or operator may take into account the actual surface characteristics.

(2) The volatilization rate shall account for the highest daily maximum temperature occurring in the past three years, the temperature of the substance in the vessel, and the concentration of the substance if the liquid spilled is a mixture or solution.

(3) The rate of release to air shall be determined from the volatilization rate of the liquid pool. The owner or operator may use the methodology in the RMP Offsite Consequence Analysis Guidance or any other publicly available techniques that account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(e) *Worst-case release scenario—flammables.* The owner or operator shall assume that the quantity of the substance, as determined under paragraph (b) of this section, vaporizes resulting in a vapor cloud explosion. A yield factor of 10 percent of the available energy released in the explosion shall be used to determine the distance to the explosion endpoint if the model used is based on TNT-equivalent methods.

(f) *Parameters to be applied.* The owner or operator shall use the parameters defined in §68.22 to determine distance to the endpoints. The owner or operator may use the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(g) *Consideration of passive mitigation.* Passive mitigation systems may be considered for the analysis of worst case provided that the mitigation system is capable of withstanding the release event triggering the scenario and would still function as intended.

(h) *Factors in selecting a worst-case scenario.* Notwithstanding the provisions of paragraph (b) of this section, the owner or operator shall select as the worst case for flammable regulated substances or the worst case for regulated toxic substances, a scenario based on the following factors if such a scenario would result in a greater distance to an endpoint defined in §68.22(a) beyond the stationary source boundary than the scenario provided under paragraph (b) of this section:

(1) Smaller quantities handled at higher process temperature or pressure; and

(2) Proximity to the boundary of the stationary source.

§68.28 Alternative release scenario analysis.

(a) The number of scenarios. The owner or operator shall identify and analyze at least one alternative release scenario for each regulated toxic substance held in a covered process(es) and

at least one alternative release scenario to represent all flammable substances held in covered processes.

(b) *Scenarios to consider.* (1) For each scenario required under paragraph (a) of this section, the owner or operator shall select a scenario:

(i) That is more likely to occur than the worst-case release scenario under §68.25; and

(ii) That will reach an endpoint offsite, unless no such scenario exists.

(2) Release scenarios considered should include, but are not limited to, the following, where applicable:

(i) Transfer hose releases due to splits or sudden hose uncoupling;

(ii) Process piping releases from failures at flanges, joints, welds, valves and valve seals, and drains or bleeds;

(iii) Process vessel or pump releases due to cracks, seal failure, or drain, bleed, or plug failure;

(iv) Vessel overfilling and spill, or overpressurization and venting through relief valves or rupture disks; and

(v) Shipping container mishandling and breakage or puncturing leading to a spill.

(c) Parameters to be applied. The owner or operator shall use the appropriate parameters defined in §68.22 to determine distance to the endpoints. The owner or operator may use either the methodology provided in the RMP Offsite Consequence Analysis Guidance or any commercially or publicly available air dispersion modeling techniques, provided the techniques account for the specified modeling conditions and are recognized by industry as applicable as part of current practices. Proprietary models that account for the modeling conditions may be used provided the owner or operator allows the implementing agency access to the model and describes model features and differences from publicly available models to local emergency planners upon request.

(d) Consideration of mitigation. Active and passive mitigation systems may be considered provided they are capable of withstanding the event that triggered the release and would still be functional.

(e) Factors in selecting scenarios. The owner or operator shall consider the following in selecting alternative release scenarios:

(1) The five-year accident history provided in §68.42; and

(2) Failure scenarios identified under §68.50 or §68.67.

§68.30 Defining offsite impacts—population.

(a) The owner or operator shall estimate in the RMP the population within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in §68.22(a).

(b) *Population to be defined.* Population shall include residential population. The presence of institutions (schools, hospitals, prisons), parks and recreational areas, and major commercial, office, and industrial buildings shall be noted in the RMP.

(c) *Data sources acceptable.* The owner or operator may use the most recent Census data, or other updated information, to estimate the population potentially affected.

(d) *Level of accuracy.* Population shall be estimated to two significant digits.

§68.33 Defining offsite impacts—environment.

(a) The owner or operator shall list in the RMP environmental receptors within a circle with its center at the point of the release and a radius determined by the distance to the endpoint defined in §68.22(a) of this part.

(b) Data sources acceptable. The owner or operator may rely on information provided on local U.S. Geological Survey maps or on any data source containing U.S.G.S. data to identify environmental receptors.

68.36 Review and update.

(a) The owner or operator shall review and update the offsite consequence analyses at least once every five years.

(b) If changes in processes, quantities stored or handled, or any other aspect of the stationary source might reasonably be expected to increase or decrease the distance to the endpoint by a factor of two or more, the owner or operator shall complete a revised analysis within six months of the change

and submit a revised risk management plan as provided in § 68.190.

§ 68.39 Documentation.

The owner or operator shall maintain the following records on the offsite consequence analyses:

(a) For worst-case scenarios, a description of the vessel or pipeline and substance selected as worst case, assumptions and parameters used, and the rationale for selection; assumptions shall include use of any administrative controls and any passive mitigation that were assumed to limit the quantity that could be released. Documentation shall include the anticipated effect of the controls and mitigation on the release quantity and rate.

(b) For alternative release scenarios, a description of the scenarios identified, assumptions and parameters used, and the rationale for the selection of specific scenarios; assumptions shall include use of any administrative controls and any mitigation that were assumed to limit the quantity that could be released. Documentation shall include the effect of the controls and mitigation on the release quantity and rate.

(c) Documentation of estimated quantity released, release rate, and duration of release.

(d) Methodology used to determine distance to endpoints.

(e) Data used to estimate population and environmental receptors potentially affected.

§ 68.42 Five-year accident history.

(a) The owner or operator shall include in the five-year accident history all accidental releases from covered processes that resulted in deaths, injuries, or significant property damage on site, or known offsite deaths, injuries, evacuations, sheltering in place, property damage, or environmental damage.

(b) *Data required.* For each accidental release included, the owner or operator shall report the following information:

(1) Date, time, and approximate duration of the release;

(2) Chemical(s) released;

(3) Estimated quantity released in pounds;

(4) The type of release event and its source;

(5) Weather conditions, if known;

(6) On-site impacts;

(7) Known offsite impacts;

(8) Initiating event and contributing factors if known;

(9) Whether offsite responders were notified if known; and

(10) Operational or process changes that resulted from investigation of the release.

(c) *Level of accuracy.* Numerical estimates may be provided to two significant digits.

Subpart C—Program 2 Prevention Program

SOURCE: 61 FR 31721, June 20, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 31721, June 20, 1996, subpart C was added, effective Aug. 19, 1996.

§ 68.48 Safety information.

(a) The owner or operator shall compile and maintain the following up-to-date safety information related to the regulated substances, processes, and equipment:

(1) Material Safety Data Sheets that meet the requirements of 29 CFR 1910.1200(g);

(2) Maximum intended inventory of equipment in which the regulated substances are stored or processed;

(3) Safe upper and lower temperatures, pressures, flows, and compositions;

(4) Equipment specifications; and

(5) Codes and standards used to design, build, and operate the process.

(b) The owner or operator shall ensure that the process is designed in compliance with recognized and generally accepted good engineering practices. Compliance with Federal or state regulations that address industry-specific safe design or with industry-specific design codes and standards may be used to demonstrate compliance with this paragraph.

(c) The owner or operator shall update the safety information if a major change occurs that makes the information inaccurate.

§68.50 Hazard review.

(a) The owner or operator shall conduct a review of the hazards associated with the regulated substances, process, and procedures. The review shall identify the following:

(1) The hazards associated with the process and regulated substances;

(2) Opportunities for equipment malfunctions or human errors that could cause an accidental release;

(3) The safeguards used or needed to control the hazards or prevent equipment malfunction or human error; and

(4) Any steps used or needed to detect or monitor releases.

(b) The owner or operator may use checklists developed by persons or organizations knowledgeable about the process and equipment as a guide to conducting the review. For processes designed to meet industry standards or Federal or state design rules, the hazard review shall, by inspecting all equipment, determine whether the process is designed, fabricated, and operated in accordance with the applicable standards or rules.

(c) The owner or operator shall document the results of the review and ensure that problems identified are resolved in a timely manner.

(d) The review shall be updated at least once every five years. The owner or operator shall also conduct reviews whenever a major change in the process occurs; all issues identified in the review shall be resolved before startup of the changed process.

§68.52 Operating procedures.

(a) The owner or operator shall prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process consistent with the safety information for that process. Operating procedures or instructions provided by equipment manufacturers or developed by persons or organizations knowledgeable about the process and equipment may be used as a basis for a stationary source's operating procedures.

(b) The procedures shall address the following:

(1) Initial startup;

(2) Normal operations;

(3) Temporary operations;

(4) Emergency shutdown and operations;

(5) Normal shutdown;

(6) Startup following a normal or emergency shutdown or a major change that requires a hazard review;

(7) Consequences of deviations and steps required to correct or avoid deviations; and

(8) Equipment inspections.

(c) The owner or operator shall ensure that the operating procedures are updated, if necessary, whenever a major change occurs and prior to startup of the changed process.

§68.54 Training.

(a) The owner or operator shall ensure that each employee presently operating a process, and each employee newly assigned to a covered process have been trained or tested competent in the operating procedures provided in §68.52 that pertain to their duties. For those employees already operating a process on June 21, 1999, the owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as provided in the operating procedures.

(b) Refresher training. Refresher training shall be provided at least every three years, and more often if necessary, to each employee operating a process to ensure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees operating the process, shall determine the appropriate frequency of refresher training.

(c) The owner or operator may use training conducted under Federal or state regulations or under industry-specific standards or codes or training conducted by covered process equipment vendors to demonstrate compliance with this section to the extent that the training meets the requirements of this section.

(d) The owner or operator shall ensure that operators are trained in any updated or new procedures prior to startup of a process after a major change.

§ 68.56 Maintenance.

(a) The owner or operator shall prepare and implement procedures to maintain the on-going mechanical integrity of the process equipment. The owner or operator may use procedures or instructions provided by covered process equipment vendors or procedures in Federal or state regulations or industry codes as the basis for stationary source maintenance procedures.

(b) The owner or operator shall train or cause to be trained each employee involved in maintaining the on-going mechanical integrity of the process. To ensure that the employee can perform the job tasks in a safe manner, each such employee shall be trained in the hazards of the process, in how to avoid or correct unsafe conditions, and in the procedures applicable to the employee's job tasks.

(c) Any maintenance contractor shall ensure that each contract maintenance employee is trained to perform the maintenance procedures developed under paragraph (a) of this section.

(d) The owner or operator shall perform or cause to be performed inspections and tests on process equipment. Inspection and testing procedures shall follow recognized and generally accepted good engineering practices. The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations, industry standards or codes, good engineering practices, and prior operating experience.

§ 68.58 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that the procedures and practices developed under the rule are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) The owner or operator shall develop a report of the audit findings.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports. This requirement does not apply to any compliance audit report that is more than five years old.

§ 68.60 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) A summary shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(d) The owner or operator shall promptly address and resolve the investigation findings and recommendations. Resolutions and corrective actions shall be documented.

(e) The findings shall be reviewed with all affected personnel whose job tasks are affected by the findings.

(f) Investigation summaries shall be retained for five years.

Subpart D—Program 3 Prevention Program

SOURCE: 61 FR 31722, June 20, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 31722, June 20, 1996, subpart D was added, effective Aug. 19, 1996.

§ 68.65 Process safety information.

(a) In accordance with the schedule set forth in §68.67, the owner or operator shall complete a compilation of written process safety information before conducting any process hazard analysis required by the rule. The compilation of written process safety information is to enable the owner or operator and the employees involved in operating the process to identify and understand the hazards posed by those processes involving regulated substances.

This process safety information shall include information pertaining to the hazards of the regulated substances used or produced by the process, information pertaining to the technology of the process, and information pertaining to the equipment in the process.

(b) Information pertaining to the hazards of the regulated substances in the process. This information shall consist of at least the following:

(1) Toxicity information;

(2) Permissible exposure limits;

(3) Physical data;

(4) Reactivity data:

(5) Corrosivity data;

(6) Thermal and chemical stability data; and

(7) Hazardous effects of inadvertent mixing of different materials that could foreseeably occur.

NOTE TO PARAGRAPH (B): Material Safety Data Sheets meeting the requirements of 29 CFR 1910.1200(g) may be used to comply with this requirement to the extent they contain the information required by this subparagraph.

(c) Information pertaining to the technology of the process.

(1) Information concerning the technology of the process shall include at least the following:

(i) A block flow diagram or simplified process flow diagram;

(ii) Process chemistry;

(iii) Maximum intended inventory;

(iv) Safe upper and lower limits for such items as temperatures, pressures, flows or compositions; and,

(v) An evaluation of the consequences of deviations.

(2) Where the original technical information no longer exists, such information may be developed in conjunction with the process hazard analysis in sufficient detail to support the analysis.

(d) Information pertaining to the equipment in the process.

(1) Information pertaining to the equipment in the process shall include:

(i) Materials of construction;

(ii) Piping and instrument diagrams (P&ID's);

(iii) Electrical classification;

(iv) Relief system design and design basis;

(v) Ventilation system design;

(vi) Design codes and standards employed;

(vii) Material and energy balances for processes built after June 21, 1999; and

(viii) Safety systems (e.g. interlocks, detection or suppression systems).

(2) The owner or operator shall document that equipment complies with recognized and generally accepted good engineering practices.

(3) For existing equipment designed and constructed in accordance with codes, standards, or practices that are no longer in general use, the owner or operator shall determine and document that the equipment is designed, maintained, inspected, tested, and operating in a safe manner.

§68.67 Process hazard analysis.

(a) The owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by this part. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards involved in the process. The owner or operator shall determine and document the priority order for conducting process hazard analyses based on a rationale which includes such considerations as extent of the process hazards, number of potentially affected employees, age of the process, and operating history of the process. The process hazard analysis shall be conducted as soon as possible, but not later than June 21, 1999. Process hazards analyses completed to comply with 29 CFR 1910.119(e) are acceptable as initial process hazards analyses. These process hazard analyses shall be updated and revalidated, based on their completion date.

(b) The owner or operator shall use one or more of the following methodologies that are appropriate to determine and evaluate the hazards of the process being analyzed.

(1) What-If;

(2) Checklist;

(3) What-If/Checklist;

(4) Hazard and Operability Study (HAZOP);

(5) Failure Mode and Effects Analysis (FMEA);

(6) Fault Tree Analysis; or

(7) An appropriate equivalent methodology.

(c) The process hazard analysis shall address:

(1) The hazards of the process;

(2) The identification of any previous incident which had a likely potential for catastrophic consequences.

(3) Engineering and administrative controls applicable to the hazards and their interrelationships such as appropriate application of detection methodologies to provide early warning of releases. (Acceptable detection methods might include process monitoring and control instrumentation with alarms, and detection hardware such as hydrocarbon sensors.);

(4) Consequences of failure of engineering and administrative controls;

(5) Stationary source siting;

(6) Human factors; and

(7) A qualitative evaluation of a range of the possible safety and health effects of failure of controls.

(d) The process hazard analysis shall be performed by a team with expertise in engineering and process operations, and the team shall include at least one employee who has experience and knowledge specific to the process being evaluated. Also, one member of the team must be knowledgeable in the specific process hazard analysis methodology being used.

(e) The owner or operator shall establish a system to promptly address the team's findings and recommendations; assure that the recommendations are resolved in a timely manner and that the resolution is documented; document what actions are to be taken; complete actions as soon as possible; develop a written schedule of when these actions are to be completed; communicate the actions to operating, maintenance and other employees whose work assignments are in the process and who may be affected by the recommendations or actions.

(f) At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in paragraph (d) of this section, to assure that the process hazard analysis is consistent with the current process. Updated and revalidated process hazard analyses completed to comply with 29 CFR 1910.119(e) are acceptable to meet the requirements of this paragraph.

(g) The owner or operator shall retain process hazards analyses and updates or revalidations for each process covered by this section, as well as the documented resolution of recommendations described in paragraph (e) of this section for the life of the process.

§ 68.69 Operating procedures.

(a) The owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting activities involved in each covered process consistent with the process safety information and shall address at least the following elements.

(1) Steps for each operating phase:

(i) Initial startup;

(ii) Normal operations;

(iii) Temporary operations;

(iv) Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a safe and timely manner.

(v) Emergency operations;

(vi) Normal shutdown; and,

(vii) Startup following a turnaround, or after an emergency shutdown.

(2) Operating limits:

(i) Consequences of deviation; and

(ii) Steps required to correct or avoid deviation.

(3) Safety and health considerations:

(i) Properties of, and hazards presented by, the chemicals used in the process;

(ii) Precautions necessary to prevent exposure, including engineering controls, administrative controls, and personal protective equipment;

(iii) Control measures to be taken if physical contact or airborne exposure occurs;

(iv) Quality control for raw materials and control of hazardous chemical inventory levels; and,

(v) Any special or unique hazards.

(4) Safety systems and their functions.

(b) Operating procedures shall be readily accessible to employees who work in or maintain a process.

(c) The operating procedures shall be reviewed as often as necessary to assure that they reflect current operating practice, including changes that result from changes in process chemicals, technology, and equipment, and changes to stationary sources. The owner or operator shall certify annually that these operating procedures are current and accurate.

(d) The owner or operator shall develop and implement safe work practices to provide for the control of hazards during operations such as lockout/tagout; confined space entry; opening process equipment or piping; and control over entrance into a stationary source by maintenance, contractor, laboratory, or other support personnel. These safe work practices shall apply to employees and contractor employees.

§68.71 Training.

(a) *Initial training.* (1) Each employee presently involved in operating a process, and each employee before being involved in operating a newly assigned process, shall be trained in an overview of the process and in the operating procedures as specified in §68.69. The training shall include emphasis on the specific safety and health hazards, emergency operations including shutdown, and safe work practices applicable to the employee's job tasks.

(2) In lieu of initial training for those employees already involved in operating a process on June 21, 1999 an owner or operator may certify in writing that the employee has the required knowledge, skills, and abilities to safely carry out the duties and responsibilities as specified in the operating procedures.

(b) *Refresher training.* Refresher training shall be provided at least every three years, and more often if necessary, to each employee involved in operating a process to assure that the employee understands and adheres to the current operating procedures of the process. The owner or operator, in consultation with the employees involved in operating the process, shall determine the appropriate frequency of refresher training.

(c) *Training documentation.* The owner or operator shall ascertain that each employee involved in operating a process has received and understood the training required by this paragraph. The owner or operator shall prepare a record which contains the identity of the employee, the date of training, and the means used to verify that the employee understood the training.

§68.73 Mechanical integrity.

(a) *Application.* Paragraphs (b) through (f) of this section apply to the following process equipment:

(1) Pressure vessels and storage tanks;

(2) Piping systems (including piping components such as valves);

(3) Relief and vent systems and devices;

(4) Emergency shutdown systems;

(5) Controls (including monitoring devices and sensors, alarms, and interlocks) and,

(6) Pumps.

(b) *Written procedures.* The owner or operator shall establish and implement written procedures to maintain the on-going integrity of process equipment.

(c) *Training for process maintenance activities.* The owner or operator shall train each employee involved in maintaining the on-going integrity of process equipment in an overview of that process and its hazards and in the procedures applicable to the employee's job tasks to assure that the employee can perform the job tasks in a safe manner.

(d) *Inspection and testing.* (1) Inspections and tests shall be performed on process equipment.

(2) Inspection and testing procedures shall follow recognized and generally accepted good engineering practices.

(3) The frequency of inspections and tests of process equipment shall be consistent with applicable manufacturers' recommendations and good engineering practices, and more frequently if determined to be necessary by prior operating experience.

(4) The owner or operator shall document each inspection and test that has been performed on process equipment. The documentation shall identify the

date of the inspection or test, the name of the person who performed the inspection or test, the serial number or other identifier of the equipment on which the inspection or test was performed, a description of the inspection or test performed, and the results of the inspection or test.

(e) *Equipment deficiencies.* The owner or operator shall correct deficiencies in equipment that are outside acceptable limits (defined by the process safety information in §68.65) before further use or in a safe and timely manner when necessary means are taken to assure safe operation.

(f) *Quality assurance.* (1) In the construction of new plants and equipment, the owner or operator shall assure that equipment as it is fabricated is suitable for the process application for which they will be used.

(2) Appropriate checks and inspections shall be performed to assure that equipment is installed properly and consistent with design specifications and the manufacturer's instructions.

(3) The owner or operator shall assure that maintenance materials, spare parts and equipment are suitable for the process application for which they will be used.

§68.75 Management of change.

(a) The owner or operator shall establish and implement written procedures to manage changes (except for ''replacements in kind'') to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process.

(b) The procedures shall assure that the following considerations are addressed prior to any change:

(1) The technical basis for the proposed change;

(2) Impact of change on safety and health;

(3) Modifications to operating procedures;

(4) Necessary time period for the change; and,

(5) Authorization requirements for the proposed change.

(c) Employees involved in operating a process and maintenance and contract employees whose job tasks will be affected by a change in the process shall be informed of, and trained in, the change prior to start-up of the process or affected part of the process.

(d) If a change covered by this paragraph results in a change in the process safety information required by §68.65 of this part, such information shall be updated accordingly.

(e) If a change covered by this paragraph results in a change in the operating procedures or practices required by §68.69, such procedures or practices shall be updated accordingly.

§68.77 Pre-startup review.

(a) The owner or operator shall perform a pre-startup safety review for new stationary sources and for modified stationary sources when the modification is significant enough to require a change in the process safety information.

(b) The pre-startup safety review shall confirm that prior to the introduction of regulated substances to a process:

(1) Construction and equipment is in accordance with design specifications;

(2) Safety, operating, maintenance, and emergency procedures are in place and are adequate;

(3) For new stationary sources, a process hazard analysis has been performed and recommendations have been resolved or implemented before startup; and modified stationary sources meet the requirements contained in management of change, §68.75.

(4) Training of each employee involved in operating a process has been completed.

§68.79 Compliance audits.

(a) The owner or operator shall certify that they have evaluated compliance with the provisions of this section at least every three years to verify that the procedures and practices developed under the standard are adequate and are being followed.

(b) The compliance audit shall be conducted by at least one person knowledgeable in the process.

(c) A report of the findings of the audit shall be developed.

(d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and

document that deficiencies have been corrected.

(e) The owner or operator shall retain the two (2) most recent compliance audit reports.

§68.81 Incident investigation.

(a) The owner or operator shall investigate each incident which resulted in, or could reasonably have resulted in a catastrophic release of a regulated substance.

(b) An incident investigation shall be initiated as promptly as possible, but not later than 48 hours following the incident.

(c) An incident investigation team shall be established and consist of at least one person knowledgeable in the process involved, including a contract employee if the incident involved work of the contractor, and other persons with appropriate knowledge and experience to thoroughly investigate and analyze the incident.

(d) A report shall be prepared at the conclusion of the investigation which includes at a minimum:

(1) Date of incident;

(2) Date investigation began;

(3) A description of the incident;

(4) The factors that contributed to the incident; and,

(5) Any recommendations resulting from the investigation.

(e) The owner or operator shall establish a system to promptly address and resolve the incident report findings and recommendations. Resolutions and corrective actions shall be documented.

(f) The report shall be reviewed with all affected personnel whose job tasks are relevant to the incident findings including contract employees where applicable.

(g) Incident investigation reports shall be retained for five years.

§68.83 Employee participation.

(a) The owner or operator shall develop a written plan of action regarding the implementation of the employee participation required by this section.

(b) The owner or operator shall consult with employees and their representatives on the conduct and development of process hazards analyses and on the development of the other elements of process safety management in this rule.

(c) The owner or operator shall provide to employees and their representatives access to process hazard analyses and to all other information required to be developed under this rule.

§68.85 Hot work permit.

(a) The owner or operator shall issue a hot work permit for hot work operations conducted on or near a covered process.

(b) The permit shall document that the fire prevention and protection requirements in 29 CFR 1910.252(a) have been implemented prior to beginning the hot work operations; it shall indicate the date(s) authorized for hot work; and identify the object on which hot work is to be performed. The permit shall be kept on file until completion of the hot work operations.

§68.87 Contractors.

(a) *Application.* This section applies to contractors performing maintenance or repair, turnaround, major renovation, or specialty work on or adjacent to a covered process. It does not apply to contractors providing incidental services which do not influence process safety, such as janitorial work, food and drink services, laundry, delivery or other supply services.

(b) *Owner or operator responsibilities.* (1) The owner or operator, when selecting a contractor, shall obtain and evaluate information regarding the contract owner or operator's safety performance and programs.

(2) The owner or operator shall inform contract owner or operator of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process.

(3) The owner or operator shall explain to the contract owner or operator the applicable provisions of subpart E of this part.

(4) The owner or operator shall develop and implement safe work practices consistent with §68.69(d), to control the entrance, presence, and exit of the contract owner or operator and contract employees in covered process areas.

(5) The owner or operator shall periodically evaluate the performance of

the contract owner or operator in fulfilling their obligations as specified in paragraph (c) of this section.

(c) *Contract owner or operator responsibilities.* (1) The contract owner or operator shall assure that each contract employee is trained in the work practices necessary to safely perform his/her job.

(2) The contract owner or operator shall assure that each contract employee is instructed in the known potential fire, explosion, or toxic release hazards related to his/her job and the process, and the applicable provisions of the emergency action plan.

(3) The contract owner or operator shall document that each contract employee has received and understood the training required by this section. The contract owner or operator shall prepare a record which contains the identity of the contract employee, the date of training, and the means used to verify that the employee understood the training.

(4) The contract owner or operator shall assure that each contract employee follows the safety rules of the stationary source including the safe work practices required by § 68.69(d).

(5) The contract owner or operator shall advise the owner or operator of any unique hazards presented by the contract owner or operator's work, or of any hazards found by the contract owner or operator's work.

Subpart E—Emergency Response

SOURCE: 61 FR 31725, June 20, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 31725, June 20, 1996, subpart E was added, effective Aug. 19, 1996.

§ 68.90 Applicability.

(a) Except as provided in paragraph (b) of this section, the owner or operator of a stationary source with Program 2 and Program 3 processes shall comply with the requirements of § 68.95.

(b) The owner or operator of stationary source whose employees will not respond to accidental releases of regulated substances need not comply with § 68.95 of this part provided that they meet the following:

(1) For stationary sources with any regulated toxic substance held in a process above the threshold quantity, the stationary source is included in the community emergency response plan developed under 42 U.S.C. 11003;

(2) For stationary sources with only regulated flammable substances held in a process above the threshold quantity, the owner or operator has coordinated response actions with the local fire department; and

(3) Appropriate mechanisms are in place to notify emergency responders when there is a need for a response.

§ 68.95 Emergency response program.

(a) The owner or operator shall develop and implement an emergency response program for the purpose of protecting public health and the environment. Such program shall include the following elements:

(1) An emergency response plan, which shall be maintained at the stationary source and contain at least the following elements:

(i) Procedures for informing the public and local emergency response agencies about accidental releases;

(ii) Documentation of proper first-aid and emergency medical treatment necessary to treat accidental human exposures; and

(iii) Procedures and measures for emergency response after an accidental release of a regulated substance;

(2) Procedures for the use of emergency response equipment and for its inspection, testing, and maintenance;

(3) Training for all employees in relevant procedures; and

(4) Procedures to review and update, as appropriate, the emergency response plan to reflect changes at the stationary source and ensure that employees are informed of changes.

(b) A written plan that complies with other Federal contingency plan regulations or is consistent with the approach in the National Response Team's Integrated Contingency Plan Guidance (''One Plan'') and that, among other matters, includes the elements provided in paragraph (a) of this section, shall satisfy the requirements of this section if the owner or operator also complies with paragraph (c) of this section.

(c) The emergency response plan developed under paragraph (a)(1) of this section shall be coordinated with the community emergency response plan developed under 42 U.S.C. 11003. Upon request of the local emergency planning committee or emergency response officials, the owner or operator shall promptly provide to the local emergency response officials information necessary for developing and implementing the community emergency response plan.

Subpart F—Regulated Substances for Accidental Release Prevention

SOURCE: 59 FR 4493, Jan. 31, 1994, unless otherwise noted. Redesignated at 61 FR 31717, June 20, 1996.

EFFECTIVE DATE NOTE: At 61 FR 31717, June 20, 1996, subpart C was redesignated as subpart F, effective Aug. 19, 1996.

§68.100 Purpose.

This subpart designates substances to be listed under section 112(r)(3), (4), and (5) of the Clean Air Act, as amended, identifies their threshold quantities, and establishes the requirements for petitioning to add or delete substances from the list.

§68.115 Threshold determination.

(a) A threshold quantity of a regulated substance listed in §68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

(1) *Concentrations of a regulated toxic substance in a mixture.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the amount of the substance in the mixture need not be considered when determining whether more than a threshold quantity is present at the stationary source. Except for oleum, toluene 2,4-diisocyanate, toluene 2,6-diisocyanate, and toluene diisocyanate (unspecified isomer), if the concentration of the regulated substance in the mixture is one percent or greater by weight, but the owner or operator can demonstrate that the partial pressure of the regulated substance in the mixture (solution) under handling or storage conditions in any portion of the process is less than 10 millimeters of mercury (mm Hg), the amount of the substance in the mixture in that portion of the process need not be considered when determining whether more than a threshold quantity is present at the stationary source. The owner or operator shall document this partial pressure measurement or estimate.

(2) *Concentrations of a regulated flammable substance in a mixture.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. If the concentration of the regulated substance in the mixture is one percent or greater by weight, then, for purposes of determining whether more than a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not meet the criteria for flammability of flash point below 73°F (22.8°C) and boiling point below 100°F (37.8°C). The owner or operator shall document these flash point and boiling point measurements or estimates.

(3) *Concentrations of a regulated explosive substance in a mixture.* Mixtures of Division 1.1 explosives listed in 49 CFR 172.101 (Hazardous Materials Table) and other explosives need not be included when determining whether a threshold quantity is present in a process, when the mixture is intended to be used on-site in a non-accidental release in a manner consistent with applicable BATF regulations. Other mixtures of Division 1.1 explosives listed in 49 CFR 172.101 and other explosives shall be included in determining whether more than a threshold quantity is present in a process if such mixtures would be treated as Division 1.1 explosives under 49 CFR parts 172 and 173.

(4) *Articles.* Regulated substances contained in articles need not be considered when determining whether more than a threshold quantity is present at the stationary source.

(5) *Uses.* Regulated substances, when in use for the following purposes, need not be included in determining whether more than a threshold quantity is present at the stationary source:

(i) Use as a structural component of the stationary source;

(ii) Use of products for routine janitorial maintenance;

(iii) Use by employees of foods, drugs, cosmetics, or other personal items containing the regulated substance; and

(iv) Use of regulated substances present in process water or non-contact cooling water as drawn from the environment or municipal sources, or use of regulated substances present in air used either as compressed air or as part of combustion.

(6) *Activities in laboratories.* If a regulated substance is manufactured, processed, or used in a laboratory at a stationary source under the supervision of a technically qualified individual as defined in §720.3(ee) of this chapter, the quantity of the substance need not be considered in determining whether a threshold quantity is present. This exemption does not apply to:

(i) Specialty chemical production;

(ii) Manufacture, processing, or use of substances in pilot plant scale operations; and

(iii) Activities conducted outside the laboratory.

§ 68.120 Petition process.

(a) Any person may petition the Administrator to modify, by addition or deletion, the list of regulated substances identified in §68.130. Based on the information presented by the petitioner, the Administrator may grant or deny a petition.

(b) A substance may be added to the list if, in the case of an accidental release, it is known to cause or may be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(c) A substance may be deleted from the list if adequate data on the health and environmental effects of the substance are available to determine that the substance, in the case of an accidental release, is not known to cause and may not be reasonably anticipated to cause death, injury, or serious adverse effects to human health or the environment.

(d) No substance for which a national primary ambient air quality standard has been established shall be added to the list. No substance regulated under title VI of the Clean Air Act, as amended, shall be added to the list.

(e) The burden of proof is on the petitioner to demonstrate that the criteria for addition and deletion are met. A petition will be denied if this demonstration is not made.

(f) The Administrator will not accept additional petitions on the same substance following publication of a final notice of the decision to grant or deny a petition, unless new data becomes available that could significantly affect the basis for the decision.

(g) Petitions to modify the list of regulated substances must contain the following:

(1) Name and address of the petitioner and a brief description of the organization(s) that the petitioner represents, if applicable;

(2) Name, address, and telephone number of a contact person for the petition;

(3) Common chemical name(s), common synonym(s), Chemical Abstracts Service number, and chemical formula and structure;

(4) Action requested (add or delete a substance);

(5) Rationale supporting the petitioner's position; that is, how the substance meets the criteria for addition and deletion. A short summary of the rationale must be submitted along with a more detailed narrative; and

(6) Supporting data; that is, the petition must include sufficient information to scientifically support the request to modify the list. Such information shall include:

(i) A list of all support documents;

(ii) Documentation of literature searches conducted, including, but not limited to, identification of the database(s) searched, the search strategy, dates covered, and printed results;

(iii) Effects data (animal, human, and environmental test data) indicating

the potential for death, injury, or serious adverse human and environmental impacts from acute exposure following an accidental release; printed copies of the data sources, in English, should be provided; and

(iv) Exposure data or previous accident history data, indicating the potential for serious adverse human health or environmental effects from an accidental release. These data may include, but are not limited to, physical and chemical properties of the substance, such as vapor pressure; modeling results, including data and assumptions used and model documentation; and historical accident data, citing data sources.

(h) Within 18 months of receipt of a petition, the Administrator shall publish in the FEDERAL REGISTER a notice either denying the petition or granting the petition and proposing a listing.

§ 68.125 Exemptions.

Agricultural nutrients. Ammonia used as an agricultural nutrient, when held by farmers, is exempt from all provisions of this part.

§ 68.130 List of substances.

(a) Explosives listed by DOT as Division 1.1 in 49 CFR 172.101 are covered under section 112(r) of the Clean Air Act. The threshold quantity for explosives is 5,000 pounds.

(b) Regulated toxic and flammable substances under section 112(r) of the Clean Air Act are the substances listed in Tables 1, 2, 3, and 4. Threshold quantities for listed toxic and flammable substances are specified in the tables.

(c) The basis for placing toxic and flammable substances on the list of regulated substances are explained in the notes to the list.

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acrolein [2-Propenal].	107–02–8	5,000	b
Acrylonitrile [2-Propenenitrile].	107–13–1	20,000	b

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acrylyl chloride [2-Propenoyl chloride].	814–68–6	5,000	b
Allyl alcohol [2-Propen-l-ol].	107–18–61	15,000	b
Allylamine [2-Propen-l-amine].	107–11–9	10,000	b
Ammonia (anhydrous).	7664–41–7	10,000	a, b
Ammonia (conc 20% or greater).	7664–41–7	20,000	a, b
Arsenous trichloride.	7784–34–1	15,000	b
Arsine	7784–42–1	1,000	b
Boron trichloride [Borane, trichloro-].	10294–34–5	5,000	b
Boron trifluoride [Borane, trifluoro-].	7637–07–2	5,000	b
Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro [oxybis [metane]]-, T-4-.	353–42–4	15,000	b
Bromine	7726–95–6	10,000	a, b
Carbon disulfide	75–15–0	20,000	b
Chlorine	7782–50–5	2,500	a, b
Chlorine dioxide [Chlorine oxide (ClO2)].	10049–04–4	1,000	c
Chloroform [Methane, trichloro-].	67–66–3	20,000	b
Chloromethyl ether [Methane, oxybis[chloro-].	542–88–1	1,000	b
Chloromethyl methyl ether [Methane, chloromethoxy-].	107–30–2	5,000	b
Crotonaldehyde [2-Butenal].	4170–30–3	20,000	b
Crotonaldehyde, (E)- [2-Butenal, (E)-].	123–73–9	20,000	b
Cyanogen chloride.	506–77–4	10,000	c
Cyclohexylamine [Cyclohexanamine].	108–91–8	15,000	b
Diborane	19287–45–7	2,500	b
Dimethyldichlorosilane [Silane, dichlorodimethyl-].	75–78–5	5,000	b
1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-].	57–14–7	15,000	b
Epichlorohydrin [Oxirane, (chloromethyl)-].	106–89–8	20,000	b

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Ethylenediamine [1,2-Ethanediamine].	107–15–3	20,000	b
Ethyleneimine [Aziridine].	151–56–4	10,000	b
Ethylene oxide [Oxirane].	75–21–8	10,000	a, b
Fluorine	7782–41–4	1,000	b
Formaldehyde (solution).	50–00–0	15,000	b
Furan	110–00–9	5,000	b
Hydrazine	302–01–2	15,000	b
Hydrochloric acid (conc 30% or greater).	7647–01–0	15,000	d
Hydrocyanic acid	74–90–8	2,500	a, b
Hydrogen chloride (anhydrous) [Hydrochloric acid].	7647–01–0	5,000	a
Hydrogen fluoride/ Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid].	7664–39–3	1,000	a, b
Hydrogen selenide.	7783–07–5	500	b
Hydrogen sulfide	7783–06–4	10,000	a, b
Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)5), (TB-5-11)-].	13463–40–6	2,500	b
Isobutyronitrile [Propanenitrile, 2-methyl-].	78–82–0	20,000	b
Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester].	108–23–6	15,000	b
Methacrylonitrile [2-Propenenitrile, 2-methyl-].	126–98–7	10,000	b
Methyl chloride [Methane, chloro-].	74–87–3	10,000	a
Methyl chloroformate [Carbonochloridic acid, methylester].	79–22–1	5,000	b
Methyl hydrazine [Hydrazine, methyl-].	60–34–4	15,000	b
Methyl isocyanate [Methane, isocyanato-].	624–83–9	10,000	a, b
Methyl mercaptan [Methanethiol].	74–93–1	10,000	b

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Methyl thiocyanate [Thiocyanic acid, methyl ester].	556–64–9	20,000	b
Methyltrichlorosilane [Silane, trichloromethyl-].	75–79–6	5,000	b
Nickel carbonyl	13463–39–3	1,000	b
Nitric acid (conc 80% or greater).	7697–37–2	15,000	b
Nitric oxide [Nitrogen oxide (NO)].	10102–43–9	10,000	b
Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide] [1].	8014–95–7	10,000	e
Peracetic acid [Ethaneperoxoic acid].	79–21–0	10,000	b
Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-].	594–42–3	10,000	b
Phosgene [Carbonic dichloride].	75–44–5	500	a, b
Phosphine	7803–51–2	5,000	b
Phosphorus oxychloride [Phosphoryl chloride].	10025–87–3	5,000	b
Phosphorus trichloride [Phosphorous trichloride].	7719–12–2	15,000	b
Piperidine	110–89–4	15,000	b
Propionitrile [Propanenitrile].	107–12–0	10,000	b
Propyl chloroformate [Carbonochloridic acid, propylester].	109–61–5	15,000	b
Propyleneimine [Aziridine, 2-methyl-].	75–55–8	10,000	b
Propylene oxide [Oxirane, methyl-].	75–56–9	10,000	b
Sulfur dioxide (anhydrous).	7446–09–5	5,000	a, b
Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-].	7783–60–0	2,500	b
Sulfur trioxide	7446–11–9	10,000	a, b
Tetramethyllead [Plumbane, tetramethyl-].	75–74–1	10,000	b
Tetranitromethane [Methane, tetranitro-].	509–14–8	10,000	b

TABLE 1 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—77 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-].	7550–45–0	2,500	b
Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-] [1].	584–84–9	10,000	a
Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-] [1].	91–08–7	10,000	a
Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-] [1].	26471–62–5	10,000	a
Trimethylchlorosilane [Silane, chlorotrimethyl-].	75–77–4	10,000	b
Vinyl acetate monomer [Acetic acid ethenyl ester].	108–05–4	15,000	b

[1] The mixture exemption in § 68.115(b)(1) does not apply to the substance.

NOTE: Basis for Listing:
a Mandated for listing by Congress.
b On EHS list, vapor pressure 10 mmHg or greater.
c Toxic gas.
d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.
e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—77 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
50–00–0	Formaldehyde (solution)	15,000	b
57–14–7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	15,000	b
60–34–4	Methyl hydrazine [Hydrazine, methyl-]	15,000	b
67–66–3	Chloroform [Methane, trichloro-]	20,000	b
74–87–3	Methyl chloride [Methane, chloro-]	10,000	a
74–90–8	Hydrocyanic acid	2,500	a, b
74–93–1	Methyl mercaptan [Methanethiol]	10,000	b
75–15–0	Carbon disulfide	20,000	b
75–21–8	Ethylene oxide [Oxirane]	10,000	a, b
75–44–5	Phosgene [Carbonic dichloride]	500	a, b
75–55–8	Propyleneimine [Aziridine, 2-methyl-]	10,000	b
75–56–9	Propylene oxide [Oxirane, methyl-]	10,000	b
75–74–1	Tetramethyllead [Plumbane, tetramethyl-]	10,000	b
75–77–4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	10,000	b
75–78–5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	5,000	b
75–79–6	Methyltrichlorosilane [Silane, trichloromethyl-]	5,000	b
78–82–0	Isobutyronitrile [Propanenitrile, 2-methyl-]	20,000	b
79–21–0	Peracetic acid [Ethaneperoxoic acid]	10,000	b
79–22–1	Methyl chloroformate [Carbonochloridic acid, methylester]	5,000	b
91–08–7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-][1]	10,000	a
106–89–8	Epichlorohydrin [Oxirane, (chloromethyl)-]	20,000	b
107–02–8	Acrolein [2-Propenal]	5,000	b
107–11–9	Allylamine [2-Propen-1-amine]	10,000	b
107–12–0	Propionitrile [Propanenitrile]	10,000	b
107–13–1	Acrylonitrile [2-Propenenitrile]	20,000	b
107–15–3	Ethylenediamine [1,2-Ethanediamine]	20,000	b
107–18–6	Allyl alcohol [2-Propen-1-ol]	15,000	b
107–30–2	Chloromethyl methyl ether [Methane, chloromethoxy-]	5,000	b
108–05–4	Vinyl acetate monomer [Acetic acid ethenyl ester]	15,000	b
108–23–6	Isopropyl chloroformate [Carbonochloridic acid, 1-methylethyl ester]	15,000	b
108–91–8	Cyclohexylamine [Cyclohexanamine]	15,000	b
109–61–5	Propyl chloroformate [Carbonochloridic acid, propylester]	15,000	b
110–00–9	Furan	5,000	b
110–89–4	Piperidine	15,000	b
123–73–9	Crotonaldehyde, (E)- [2-Butenal, (E)-]	20,000	b

TABLE 2 TO § 68.130.—LIST OF REGULATED TOXIC SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[CAS Number Order—77 Substances]

CAS No.	Chemical name	Threshold quantity (lbs)	Basis for listing
126–98–7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	10,000	b
151–56–4	Ethyleneimine [Aziridine]	10,000	b
302–01–2	Hydrazine	15,000	b
353–42–4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4-.	15,000	b
506–77–4	Cyanogen chloride	10,000	c
509–14–8	Tetranitromethane [Methane, tetranitro-]	10,000	b
542–88–1	Chloromethyl ether [Methane, oxybis[chloro-]	1,000	b
556–64–9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	20,000	b
584–84–9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-][1]	10,000	a
594–42–3	Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	10,000	b
624–83–9	Methyl isocyanate [Methane, isocyanato-]	10,000	a, b
814–68–6	Acrylyl chloride [2-Propenoyl chloride]	5,000	b
4170–30–3	Crotonaldehyde [2-Butenal]	20,000	b
7446–09–5	Sulfur dioxide (anhydrous)	5,000	a, b
7446–11–9	Sulfur trioxide	10,000	a, b
7550–45–0	Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-]	2,500	b
7637–07–2	Boron trifluoride [Borane, trifluoro-]	5,000	b
7647–01–0	Hydrochloric acid (conc 30% or greater)	15,000	d
7647–01–0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	5,000	a
7664–39–3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	1,000	a, b
7664–41–7	Ammonia (anhydrous)	10,000	a, b
7664–41–7	Ammonia (conc 20% or greater)	20,000	a, b
7697–37–2	Nitric acid (conc 80% or greater)	15,000	b
7719–12–2	Phosphorus trichloride [Phosphorous trichloride]	15,000	b
7726–95–6	Bromine	10,000	a, b
7782–41–4	Fluorine	1,000	b
7782–50–5	Chlorine	2,500	a, b
7783–06–4	Hydrogen sulfide	10,000	a, b
7783–07–5	Hydrogen selenide	500	b
7783–60–0	Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-]	2,500	b
7784–34–1	Arsenous trichloride	15,000	b
7784–42–1	Arsine	1,000	b
7803–51–2	Phosphine	5,000	b
8014–95–7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide][1]	10,000	e
10025–87–3	Phosphorus oxychloride [Phosphoryl chloride]	5,000	b
10049–04–4	Chlorine dioxide [Chlorine oxide (ClO_2)]	1,000	c
10102–43–9	Nitric oxide [Nitrogen oxide (NO)]	10,000	b
10294–34–5	Boron trichloride [Borane, trichloro-]	5,000	b
13463–39–3	Nickel carbonyl	1,000	b
13463–40–6	Iron, pentacarbonyl- [Iron carbonyl ($Fe(CO)_5$), (TB-5-11)-]	2,500	b
19287–45–7	Diborane	2,500	b
26471–62–5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-1][1].	10,000	a

[1] The mixture exemption in § 68.115(b)(1) does not apply to the substance.

NOTE: Basis for Listing:

a Mandated for listing by Congress.
b On EHS list, vapor pressure 10 mmHg or greater.
c Toxic gas.
e Toxicity of sulfur trioxide and sulfuric acid, potential to release sulfur trioxide, and history of accidents.

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[Alphabetical Order—63 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
Acetaldehyde	75–07–0	10,000	g
Acetylene [Ethyne]	74–86–2	10,000	f
Bromotrifluorethylene [Ethene, bromotrifluoro-]	598–73–2	10,000	f
1,3-Butadiene	106–99–0	10,000	f
Butane	106–97–8	10,000	f
1-Butene	106–98–9	10,000	f
2-Butene	107–01–7	10,000	f
Butene	25167–67–3	10,000	f

TABLE 3 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION—Continued

[Alphabetical Order—63 Substances]

Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
2-Butene-cis	590–18–1	10,000	f
2-Butene-trans [2-Butene, (E)]	624–64–6	10,000	f
Carbon oxysulfide [Carbon oxide sulfide (COS)]	463–58–1	10,000	f
Chlorine monoxide [Chlorine oxide]	7791–21–1	10,000	f
2-Chloropropylene [1-Propene, 2-chloro-]	557–98–2	10,000	g
1-Chloropropylene [1-Propene, 1-chloro-]	590–21–6	10,000	g
Cyanogen [Ethanedinitrile]	460–19–5	10,000	f
Cyclopropane	75–19–4	10,000	f
Dichlorosilane [Silane, dichloro-]	4109–96–0	10,000	f
Difluoroethane [Ethane, 1,1-difluoro-]	75–37–6	10,000	f
Dimethylamine [Methanamine, N-methyl-]	124–40–3	10,000	f
2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463–82–1	10,000	f
Ethane	74–84–0	10,000	f
Ethyl acetylene [1-Butyne]	107–00–6	10,000	f
Ethylamine [Ethanamine]	75–04–7	10,000	f
Ethyl chloride [Ethane, chloro-]	75–00–3	10,000	f
Ethylene [Ethene]	74–85–1	10,000	f
Ethyl ether [Ethane, 1,1'-oxybis-]	60–29–7	10,000	g
Ethyl mercaptan [Ethanethiol]	75–08–1	10,000	g
Ethyl nitrite [Nitrous acid, ethyl ester]	109–95–5	10,000	f
Hydrogen	1333–74–0	10,000	f
Isobutane [Propane, 2-methyl]	75–28–5	10,000	f
Isopentane [Butane, 2-methyl-]	78–78–4	10,000	g
Isoprene [1,3-Butadinene, 2-methyl-]	78–79–5	10,000	g
Isopropylamine [2-Propanamine]	75–31–0	10,000	g
Isopropyl chloride [Propane, 2-chloro-]	75–29–6	10,000	g
Methane	74–82–8	10,000	f
Methylamine [Methanamine]	74–89–5	10,000	f
3-Methyl-1-butene	563–45–1	10,000	f
2-Methyl-1-butene	563–46–2	10,000	g
Methyl ether [Methane, oxybis-]	115–10–6	10,000	f
Methyl formate [Formic acid, methyl ester]	107–31–3	10,000	g
2-Methylpropene [1-Propene, 2-methyl-]	115–11–7	10,000	f
1,3-Pentadinene	504–60–9	10,000	f
Pentane	109–66–0	10,000	g
1-Pentene	109–67–1	10,000	g
2-Pentene, (E)-	646–04–8	10,000	g
2-Pentene, (Z)-	627–20–3	10,000	g
Propadiene [1,2-Propadiene]	463–49–0	10,000	f
Propane	74–98–6	10,000	f
Propylene [1-Propene]	115–07–1	10,000	f
Propyne [1-Propyne]	74–99–7	10,000	f
Silane	7803–62–5	10,000	f
Tetrafluoroethylene [Ethene, tetrafluoro-]	116–14–3	10,000	f
Tetramethylsilane [Silane, tetramethyl-]	75–76–3	10,000	g
Trichlorosilane [Silane, trichloro-]	10025–78–2	10,000	g
Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79–38–9	10,000	f
Trimethylamine [Methanamine, N,N-dimethyl-]	75–50–3	10,000	f
Vinyl acetylene [1-Buten-3-yne]	689–97–4	10,000	f
Vinyl chloride [Ethene, chloro-]	75–01–4	10,000	a, f
Vinyl ethyl ether [Ethene, ethoxy-]	109–92–2	10,000	g
Vinyl fluoride [Ethene, fluoro-]	75–02–5	10,000	f
Vinylidene chloride [Ethene, 1,1-dichloro-]	75–35–4	10,000	g
Vinylidene fluoride [Ethene, 1,1-difluoro-]	75–38–7	10,000	f
Vinyl methyl ether [Ethene, methoxy-]	107–25–5	10,000	f

NOTE: Basis for Listing:
a Mandated for listing by Congress.
f Flammable gas.
g Volatile flammable liquid.

TABLE 4 TO § 68.130.—LIST OF REGULATED FLAMMABLE SUBSTANCES AND THRESHOLD QUANTITIES FOR ACCIDENTAL RELEASE PREVENTION

[CAS Number Order—63 Substances]

CAS No.	Chemical name	CAS No.	Threshold quantity (lbs)	Basis for listing
60–29–7	Ethyl ether [Ethane, 1,1′-oxybis-]	60–29–7	10,000	g
74–82–8	Methane	74–82–8	10,000	f
74–84–0	Ethane	74–84–0	10,000	f
74–85–1	Ethylene [Ethene]	74–85–1	10,000	f
74–86–2	Acetylene [Ethyne]	74–86–2	10,000	f
74–89–5	Methylamine [Methanamine]	74–89–5	10,000	f
74–98–6	Propane	74–98–6	10,000	f
74–99–7	Propyne [1-Propyne]	74–99–7	10,000	f
75–00–3	Ethyl chloride [Ethane, chloro-]	75–00–3	10,000	f
75–01–4	Vinyl chloride [Ethene, chloro-]	75–01–4	10,000	a, f
75–02–5	Vinyl fluoride [Ethene, fluoro-]	75–02–5	10,000	f
75–04–7	Ethylamine [Ethanamine]	75–04–7	10,000	f
75–07–0	Acetaldehyde	75–07–0	10,000	g
75–08–1	Ethyl mercaptan [Ethanethiol]	75–08–1	10,000	g
75–19–4	Cyclopropane	75–19–4	10,000	f
75–28–5	Isobutane [Propane, 2-methyl]	75–28–5	10,000	f
75–29–6	Isopropyl chloride [Propane, 2-chloro-]	75–29–6	10,000	g
75–31–0	Isopropylamine [2-Propanamine]	75–31–0	10,000	g
75–35–4	Vinylidene chloride [Ethene, 1,1-dichloro-]	75–35–4	10,000	g
75–37–6	Difluoroethane [Ethane, 1,1-difluoro-]	75–37–6	10,000	f
75–38–7	Vinylidene fluoride [Ethene, 1,1-difluoro-]	75–38–7	10,000	f
75–50–3	Trimethylamine [Methanamine, N, N-dimethyl-]	75–50–3	10,000	f
75–76–3	Tetramethylsilane [Silane, tetramethyl-]	75–76–3	10,000	g
78–78–4	Isopentane [Butane, 2-methyl-]	78–78–4	10,000	g
78–79–5	Isoprene [1,3,-Butadiene, 2-methyl-]	78–79–5	10,000	g
79–38–9	Trifluorochloroethylene [Ethene, chlorotrifluoro-]	79–38–9	10,000	f
106–97–8	Butane	106–97–8	10,000	f
106–98–9	1-Butene	106–98–9	10,000	f
196–99–0	1,3-Butadiene	106–99–0	10,000	f
107–00–6	Ethyl acetylene [1-Butyne]	107–00–6	10,000	f
107–01–7	2-Butene	107–01–7	10,000	f
107–25–5	Vinyl methyl ether [Ethene, methoxy-]	107–25–5	10,000	f
107–31–3	Methyl formate [Formic acid, methyl ester]	107–31–3	10,000	g
109–66–0	Pentane	109–66–0	10,000	g
109–67–1	1-Pentene	109–67–1	10,000	g
109–92–2	Vinyl ethyl ether [Ethene, ethoxy-]	109–92–2	10,000	g
109–95–5	Ethyl nitrite [Nitrous acid, ethyl ester]	109–95–5	10,000	f
115–07–1	Propylene [1-Propene]	115–07–1	10,000	f
115–10–6	Methyl ether [Methane, oxybis-]	115–10–6	10,000	f
115–11–7	2-Methylpropene [1-Propene, 2-methyl-]	115–11–7	10,000	f
116–14–3	Tetrafluoroethylene [Ethene, tetrafluoro-]	116–14–3	10,000	f
124–40–3	Dimethylamine [Methanamine, N-methyl-]	124–40–3	10,000	f
460–19–5	Cyanogen [Ethanedinitrile]	460–19–5	10,000	f
463–49–0	Propadiene [1,2-Propadiene]	463–49–0	10,000	f
463–58–1	Carbon oxysulfide [Carbon oxide sulfide (COS)]	463–58–1	10,000	f
463–82–1	2,2-Dimethylpropane [Propane, 2,2-dimethyl-]	463–82–1	10,000	f
504–60–9	1,3-Pentadiene	504–60–9	10,000	f
557–98–2	2-Chloropropylene [1-Propene, 2-chloro-]	557–98–2	10,000	g
563–45–1	3-Methyl-1-butene	563–45–1	10,000	f
563–46–2	2-Methyl-1-butene	563–46–2	10,000	g
590–18–1	2-Butene-cis	590–18–1	10,000	f
590–21–6	1-Chloropropylene [1-Propene, 1-chloro-]	590–21–6	10,000	g
598–73–2	Bromotrifluorethylene [Ethene, bromotrifluoro-]	598–73–2	10,000	f
624–64–6	2-Butene-trans [2-Butene, (E)]	624–64–6	10,000	f
627–20–3	2-Pentene, (Z)-	627–20–3	10,000	g
646–04–8	2-Pentene, (E)-	646–04–8	10,000	g
689–97–4	Vinyl acetylene [1-Buten-3-yne]	689–97–4	10,000	f
1333–74–0	Hydrogen	1333–74–0	10,000	f
4109–96–0	Dichlorosilane [Silane, dichloro-]	4109–96–0	10,000	f
7791–21–1	Chlorine monoxide [Chlorine oxide]	7791–21–1	10,000	f
7803–62–5	Silane	7803–62–5	10,000	f
10025–78–2	Trichlorosilane [Silane,trichloro-]	10025–78–2	10,000	g
25167–67–3	Butene	25167–67–3	10,000	f

Note: Basis for Listing: a Mandated for listing by Congress. f Flammable gas. g Volatile flammable liquid.

Subpart G—Risk Management Plan

SOURCE: 61 FR 31726, June 20, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 31726, June 20, 1996, subpart G was added, effective Aug. 19, 1996.

§68.150 Submission.

(a) The owner or operator shall submit a single RMP that includes the information required by §§68.155 through 68.185 for all covered processes. The RMP shall be submitted in a method and format to a central point as specified by EPA prior to June 21, 1999.

(b) The owner or operator shall submit the first RMP no later than the latest of the following dates:

(1) June 21, 1999;

(2) Three years after the date on which a regulated substance is first listed under §68.130; or

(3) The date on which a regulated substance is first present above a threshold quantity in a process.

(c) Subsequent submissions of RMPs shall be in accordance with §68.190.

(d) Notwithstanding the provisions of §§68.155 to 68.190, the RMP shall exclude classified information. Subject to appropriate procedures to protect such information from public disclosure, classified data or information excluded from the RMP may be made available in a classified annex to the RMP for review by Federal and state representatives who have received the appropriate security clearances.

§68.155 Executive summary.

The owner or operator shall provide in the RMP an executive summary that includes a brief description of the following elements:

(a) The accidental release prevention and emergency response policies at the stationary source;

(b) The stationary source and regulated substances handled;

(c) The worst-case release scenario(s) and the alternative release scenario(s), including administrative controls and mitigation measures to limit the distances for each reported scenario;

(d) The general accidental release prevention program and chemical-specific prevention steps;

(e) The five-year accident history;

(f) The emergency response program; and

(g) Planned changes to improve safety.

§68.160 Registration.

(a) The owner or operator shall complete a single registration form and include it in the RMP. The form shall cover all regulated substances handled in covered processes.

(b) The registration shall include the following data:

(1) Stationary source name, street, city, county, state, zip code, latitude, and longitude;

(2) The stationary source Dun and Bradstreet number;

(3) Name and Dun and Bradstreet number of the corporate parent company;

(4) The name, telephone number, and mailing address of the owner or operator;

(5) The name and title of the person or position with overall responsibility for RMP elements and implementation;

(6) The name, title, telephone number, and 24-hour telephone number of the emergency contact;

(7) For each covered process, the name and CAS number of each regulated substance held above the threshold quantity in the process, the maximum quantity of each regulated substance or mixture in the process (in pounds) to two significant digits, the SIC code, and the Program level of the process;

(8) The stationary source EPA identifier;

(9) The number of full-time employees at the stationary source;

(10) Whether the stationary source is subject to 29 CFR 1910.119;

(11) Whether the stationary source is subject to 40 CFR part 355;

(12) Whether the stationary source has a CAA Title V operating permit; and

(13) The date of the last safety inspection of the stationary source by a Federal, state, or local government agency and the identity of the inspecting entity.

§ 68.165 Offsite consequence analysis.

(a) The owner or operator shall submit in the RMP information:

(1) One worst-case release scenario for each Program 1 process; and

(2) For Program 2 and 3 processes, one worst-case release scenario to represent all regulated toxic substances held above the threshold quantity and one worst-case release scenario to represent all regulated flammable substances held above the threshold quantity. If additional worst-case scenarios for toxics or flammables are required by §68.25(a)(2)(iii), the owner or operator shall submit the same information on the additional scenario(s). The owner or operator of Program 2 and 3 processes shall also submit information on one alternative release scenario for each regulated toxic substance held above the threshold quantity and one alternative release scenario to represent all regulated flammable substances held above the threshold quantity.

(b) The owner or operator shall submit the following data:

(1) Chemical name;

(2) Physical state (toxics only);

(3) Basis of results (give model name if used);

(4) Scenario (explosion, fire, toxic gas release, or liquid spill and vaporization);

(5) Quantity released in pounds;

(6) Release rate;

(7) Release duration;

(8) Wind speed and atmospheric stability class (toxics only);

(9) Topography (toxics only);

(10) Distance to endpoint;

(11) Public and environmental receptors within the distance;

(12) Passive mitigation considered; and

(13) Active mitigation considered (alternative releases only);

§ 68.168 Five-year accident history.

The owner or operator shall submit in the RMP the information provided in §68.42(b) on each accident covered by §68.42(a).

§ 68.170 Prevention program/Program 2.

(a) For each Program 2 process, the owner or operator shall provide in the RMP the information indicated in paragraphs (b) through (k) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The SIC code for the process.

(c) The name(s) of the chemical(s) covered.

(d) The date of the most recent review or revision of the safety information and a list of Federal or state regulations or industry-specific design codes and standards used to demonstrate compliance with the safety information requirement.

(e) The date of completion of the most recent hazard review or update.

(1) The expected date of completion of any changes resulting from the hazard review;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last hazard review.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit.

(j) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation.

(k) The date of the most recent change that triggered a review or revision of safety information, the hazard review, operating or maintenance procedures, or training.

§68.175 Prevention program/Program 3.

(a) For each Program 3 process, the owner or operator shall provide the information indicated in paragraphs (b) through (p) of this section. If the same information applies to more than one covered process, the owner or operator may provide the information only once, but shall indicate to which processes the information applies.

(b) The SIC code for the process.

(c) The name(s) of the substance(s) covered.

(d) The date on which the safety information was last reviewed or revised.

(e) The date of completion of the most recent PHA or update and the technique used.

(1) The expected date of completion of any changes resulting from the PHA;

(2) Major hazards identified;

(3) Process controls in use;

(4) Mitigation systems in use;

(5) Monitoring and detection systems in use; and

(6) Changes since the last PHA.

(f) The date of the most recent review or revision of operating procedures.

(g) The date of the most recent review or revision of training programs;

(1) The type of training provided—classroom, classroom plus on the job, on the job; and

(2) The type of competency testing used.

(h) The date of the most recent review or revision of maintenance procedures and the date of the most recent equipment inspection or test and the equipment inspected or tested.

(i) The date of the most recent change that triggered management of change procedures and the date of the most recent review or revision of management of change procedures.

(j) The date of the most recent prestartup review.

(k) The date of the most recent compliance audit and the expected date of completion of any changes resulting from the compliance audit;

(l) The date of the most recent incident investigation and the expected date of completion of any changes resulting from the investigation;

(m) The date of the most recent review or revision of employee participation plans;

(n) The date of the most recent review or revision of hot work permit procedures;

(o) The date of the most recent review or revision of contractor safety procedures; and

(p) The date of the most recent evaluation of contractor safety performance.

§68.180 Emergency response program.

(a) The owner or operator shall provide in the RMP the following information:

(1) Do you have a written emergency response plan?

(2) Does the plan include specific actions to be taken in response to an accidental releases of a regulated substance?

(3) Does the plan include procedures for informing the public and local agencies responsible for responding to accidental releases?

(4) Does the plan include information on emergency health care?

(5) The date of the most recent review or update of the emergency response plan;

(6) The date of the most recent emergency response training for employees.

(b) The owner or operator shall provide the name and telephone number of the local agency with which the plan is coordinated.

(c) The owner or operator shall list other Federal or state emergency plan requirements to which the stationary source is subject.

§68.185 Certification.

(a) For Program 1 processes, the owner or operator shall submit in the RMP the certification statement provided in §68.12(b)(4).

(b) For all other covered processes, the owner or operator shall submit in the RMP a single certification that, to the best of the signer's knowledge, information, and belief formed after reasonable inquiry, the information submitted is true, accurate, and complete.

§68.190 Updates.

(a) The owner or operator shall review and update the RMP as specified in paragraph (b) of this section and submit it in a method and format to a

central point specified by EPA prior to June 21, 1999.

(b) The owner or operator of a stationary source shall revise and update the RMP submitted under §68.150 as follows:

(1) Within five years of its initial submission or most recent update required by paragraphs (b)(2) through (b)(7) of this section, whichever is later.

(2) No later than three years after a newly regulated substance is first listed by EPA;

(3) No later than the date on which a new regulated substance is first present in an already covered process above a threshold quantity;

(4) No later than the date on which a regulated substance is first present above a threshold quantity in a new process;

(5) Within six months of a change that requires a revised PHA or hazard review;

(6) Within six months of a change that requires a revised offsite consequence analysis as provided in §68.36; and

(7) Within six months of a change that alters the Program level that applied to any covered process.

(c) If a stationary source is no longer subject to this part, the owner or operator shall submit a revised registration to EPA within six months indicating that the stationary source is no longer covered.

Subpart H—Other Requirements

SOURCE: 61 FR 31728, June 20, 1996, unless otherwise noted.

EFFECTIVE DATE NOTE: At 61 FR 31728, June 20, 1996, subpart H was added, effective Aug. 19, 1996.

§68.200 Recordkeeping.

The owner or operator shall maintain records supporting the implementation of this part for five years unless otherwise provided in subpart D of this part.

§68.210 Availability of information to the public.

(a) The RMP required under subpart G of this part shall be available to the public under 42 U.S.C. 7414(c).

(b) The disclosure of classified information by the Department of Defense or other Federal agencies or contractors of such agencies shall be controlled by applicable laws, regulations, or executive orders concerning the release of classified information.

§68.215 Permit content and air permitting authority or designated agency requirements.

(a) These requirements apply to any stationary source subject to this part 68 and parts 70 or 71 of this chapter. The 40 CFR part 70 or part 71 permit for the stationary source shall contain:

(1) A statement listing this part as an applicable requirement;

(2) Conditions that require the source owner or operator to submit:

(i) A compliance schedule for meeting the requirements of this part by the date provided in §68.10(a) or;

(ii) As part of the compliance certification submitted under 40 CFR 70.6(c)(5), a certification statement that the source is in compliance with all requirements of this part, including the registration and submission of the RMP.

(b) The owner or operator shall submit any additional relevant information requested by the air permitting authority or designated agency.

(c) For 40 CFR part 70 or part 71 permits issued prior to the deadline for registering and submitting the RMP and which do not contain permit conditions described in paragraph (a) of this section, the owner or operator or air permitting authority shall initiate permit revision or reopening according to the procedures of 40 CFR 70.7 or 71.7 to incorporate the terms and conditions consistent with paragraph (a) of this section.

(d) The state may delegate the authority to implement and enforce the requirements of paragraph (e) of this section to a state or local agency or agencies other than the air permitting authority. An up-to-date copy of any delegation instrument shall be maintained by the air permitting authority. The state may enter a written agreement with the Administrator under which EPA will implement and enforce the requirements of paragraph (e) of this section.

(e) The air permitting authority or the agency designated by delegation or agreement under paragraph (d) of this section shall, at a minimum:

(1) Verify that the source owner or operator has registered and submitted an RMP or a revised plan when required by this part;

(2) Verify that the source owner or operator has submitted a source certification or in its absence has submitted a compliance schedule consistent with paragraph (a)(2) of this section;

(3) For some or all of the sources subject to this section, use one or more mechanisms such as, but not limited to, a completeness check, source audits, record reviews, or facility inspections to ensure that permitted sources are in compliance with the requirements of this part; and

(4) Initiate enforcement action based on paragraphs (e)(1) and (e)(2) of this section as appropriate.

§68.220 Audits.

(a) In addition to inspections for the purpose of regulatory development and enforcement of the Act, the implementing agency shall periodically audit RMPs submitted under subpart G of this part to review the adequacy of such RMPs and require revisions of RMPs when necessary to ensure compliance with subpart G of this part.

(b) The implementing agency shall select stationary sources for audits based on any of the following criteria:

(1) Accident history of the stationary source;

(2) Accident history of other stationary sources in the same industry;

(3) Quantity of regulated substances present at the stationary source;

(4) Location of the stationary source and its proximity to the public and environmental receptors;

(5) The presence of specific regulated substances;

(6) The hazards identified in the RMP; and

(7) A plan providing for neutral, random oversight.

(c) Exemption from audits. A stationary source with a Star or Merit ranking under OSHA's voluntary protection program shall be exempt from audits under paragraph (b)(2) and (b)(7) of this section.

(d) The implementing agency shall have access to the stationary source, supporting documentation, and any area where an accidental release could occur.

(e) Based on the audit, the implementing agency may issue the owner or operator of a stationary source a written preliminary determination of necessary revisions to the stationary source's RMP to ensure that the RMP meets the criteria of subpart G of this part. The preliminary determination shall include an explanation for the basis for the revisions, reflecting industry standards and guidelines (such as AIChE/CCPS guidelines and ASME and API standards) to the extent that such standards and guidelines are applicable, and shall include a timetable for their implementation.

(f) *Written response to a preliminary determination.* (1) The owner or operator shall respond in writing to a preliminary determination made in accordance with paragraph (e) of this section. The response shall state the owner or operator will implement the revisions contained in the preliminary determination in accordance with the timetable included in the preliminary determination or shall state that the owner or operator rejects the revisions in whole or in part. For each rejected revision, the owner or operator shall explain the basis for rejecting such revision. Such explanation may include substitute revisions.

(2) The written response under paragraph (f)(1) of this section shall be received by the implementing agency within 90 days of the issue of the preliminary determination or a shorter period of time as the implementing agency specifies in the preliminary determination as necessary to protect public health and the environment. Prior to the written response being due and upon written request from the owner or operator, the implementing agency may provide in writing additional time for the response to be received.

(g) After providing the owner or operator an opportunity to respond under paragraph (f) of this section, the implementing agency may issue the owner

or operator a written final determination of necessary revisions to the stationary source's RMP. The final determination may adopt or modify the revisions contained in the preliminary determination under paragraph (e) of this section or may adopt or modify the substitute revisions provided in the response under paragraph (f) of this section. A final determination that adopts a revision rejected by the owner or operator shall include an explanation of the basis for the revision. A final determination that fails to adopt a substitute revision provided under paragraph (f) of this section shall include an explanation of the basis for finding such substitute revision unreasonable.

(h) Thirty days after completion of the actions detailed in the implementation schedule set in the final determination under paragraph (g) of this section, the owner or operator shall be in violation of subpart G of this part and this section unless the owner or operator revises the RMP prepared under subpart G of this part as required by the final determination, and submits the revised RMP as required under § 68.150.

(i) The public shall have access to the preliminary determinations, responses, and final determinations under this section in a manner consistent with § 68.210.

(j) Nothing in this section shall preclude, limit, or interfere in any way with the authority of EPA or the state to exercise its enforcement, investigatory, and information gathering authorities concerning this part under the Act.

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS

[As defined in §68.22 of this part]

CAS No.	Chemical name	Toxic endpoint (mg/L)
107–02–8	Acrolein [2-Propenal]	0.0011
107–13–1	Acrylonitrile [2-Propenenitrile]	0.076
814–68–6	Acrylyl chloride [2-Propenoyl chloride]	0.00090
107–18–6	Allyl alcohol [2-Propen-1-ol]	0.036
107–11–9	Allylamine [2-Propen-1-amine]	0.0032
7664–41–7	Ammonia (anhydrous)	0.14
7664–41–7	Ammonia (conc 20% or greater)	0.14
7784–34–1	Arsenous trichloride	0.010
7784–42–1	Arsine	0.0019
10294–34–5	Boron trichloride [Borane, trichloro-]	0.010
7637–07–2	Boron trifluoride [Borane, trifluoro-]	0.028
353–42–4	Boron trifluoride compound with methyl ether (1:1) [Boron, trifluoro[oxybis[methane]]-, T-4	0.023
7726–95–6	Bromine	0.0065
75–15–0	Carbon disulfide	0.16
7782–50–5	Chlorine	0.0087
10049–04–4	Chlorine dioxide [Chlorine oxide (ClO2)]	0.0028
67–66–3	Chloroform [Methane, trichloro-]	0.49
542–88–1	Chloromethyl ether [Methane, oxybis[chloro-]	0.00025
107–30–2	Chloromethyl methyl ether [Methane, chloromethoxy-]	0.0018
4170–30–3	Crotonaldehyde [2-Butenal]	0.029
123–73–9	Crotonaldehyde, (E)-, [2-Butenal, (E)-]	0.029
506–77–4	Cyanogen chloride	0.030
108–91–8	Cyclohexylamine [Cyclohexanamine]	0.16
19287–45–7	Diborane	0.0011
75–78–5	Dimethyldichlorosilane [Silane, dichlorodimethyl-]	0.026
57–14–7	1,1-Dimethylhydrazine [Hydrazine, 1,1-dimethyl-]	0.012
106–89–8	Epichlorohydrin [Oxirane, (chloromethyl)-]	0.076
107–15–3	Ethylenediamine [1,2-Ethanediamine]	0.49
151–56–4	Ethyleneimine [Aziridine]	0.018
75–21–8	Ethylene oxide [Oxirane]	0.090
7782–41–4	Fluorine	0.0039
50–00–0	Formaldehyde (solution)	0.012
110–00–9	Furan	0.0012
302–01–2	Hydrazine	0.011
7647–01–0	Hydrochloric acid (conc 30% or greater)	0.030
74–90–8	Hydrocyanic acid	0.011
7647–01–0	Hydrogen chloride (anhydrous) [Hydrochloric acid]	0.030
7664–39–3	Hydrogen fluoride/Hydrofluoric acid (conc 50% or greater) [Hydrofluoric acid]	0.016
7783–07–5	Hydrogen selenide	0.00066
7783–06–4	Hydrogen sulfide	0.042
13463–40–6	Iron, pentacarbonyl- [Iron carbonyl (Fe(CO)5), (TB–5–11)-]	0.00044
78–82–0	Isobutyronitrile [Propanenitrile, 2-methyl-]	0.14
108–23–6	Isopropyl chloroformate [Carbonochloride acid, 1-methylethyl ester]	0.10

APPENDIX A TO PART 68—TABLE OF TOXIC ENDPOINTS—Continued

[As defined in §68.22 of this part]

CAS No.	Chemical name	Toxic endpoint (mg/L)
126–98–7	Methacrylonitrile [2-Propenenitrile, 2-methyl-]	0.0027
74–87–3	Methyl chloride [Methane, chloro-]	0.82
79–22–1	Methyl chloroformate [Carbonochloridic acid, methylester]	0.0019
60–34–4	Methyl hydrazine [Hydrazine, methyl-]	0.0094
624–83–9	Methyl isocyanate [Methane, isocyanato-]	0.0012
74–93–1	Methyl mercaptan [Methanethiol]	0.049
556–64–9	Methyl thiocyanate [Thiocyanic acid, methyl ester]	0.085
75–79–6	Methyltrichlorosilane [Silane, trichloromethyl-]	0.018
13463–39–3	Nickel carbonyl	0.00067
7697–37–2	Nitric acid (conc 80% or greater)	0.026
10102–43–9	Nitric oxide [Nitrogen oxide (NO)]	0.031
8014–95–7	Oleum (Fuming Sulfuric acid) [Sulfuric acid, mixture with sulfur trioxide]	0.010
79–21–0	Peracetic acid [Ethaneperoxoic acid]	0.0045
594–42–3	Perchloromethylmercaptan [Methanesulfenyl chloride, trichloro-]	0.0076
75–44–5	Phosgene [Carbonic dichloride]	0.00081
7803–51–2	Phosphine	0.0035
10025–87–3	Phosphorus oxychloride [Phosphoryl chloride]	0.0030
7719–12–2	Phosphorus trichloride [Phosphorous trichloride]	0.028
110–89–4	Piperidine	0.022
107–12–0	Propionitrile [Propanenitrile]	0.0037
109–61–5	Propyl chloroformate [Carbonochloridic acid, propylester]	0.010
75–55–8	Propyleneimine [Aziridine, 2-methyl-]	0.12
75–56–9	Propylene oxide [Oxirane, methyl-]	0.59
7446–09–5	Sulfur dioxide (anhydrous)	0.0078
7783–60–0	Sulfur tetrafluoride [Sulfur fluoride (SF4), (T-4)-]	0.0092
7446–11–9	Sulfur trioxide	0.010
75–74–1	Tetramethyllead [Plumbane, tetramethyl-]	0.0040
509–14–8	Tetranitromethane [Methane, tetranitro-]	0.0040
7750–45–0	Titanium tetrachloride [Titanium chloride (TiCl4) (T-4)-]	0.020
584–84–9	Toluene 2,4-diisocyanate [Benzene, 2,4-diisocyanato-1-methyl-]	0.0070
91–08–7	Toluene 2,6-diisocyanate [Benzene, 1,3-diisocyanato-2-methyl-]	0.0070
26471–62–5	Toluene diisocyanate (unspecified isomer) [Benzene, 1,3-diisocyanatomethyl-]	0.0070
75–77–4	Trimethylchlorosilane [Silane, chlorotrimethyl-]	0.050
108–05–4	Vinyl acetate monomer [Acetic acid ethenyl ester]	0.26

[61 FR 31729, June 20, 1996]

EFFECTIVE DATE NOTE: At 61 FR 31729, June 20, 1996, appendix A was added to part 68, effective Aug. 19, 1996.

PART 69—SPECIAL EXEMPTIONS FROM REQUIREMENTS OF THE CLEAN AIR ACT

Subpart A—Guam

Sec.
69.11 New exemptions.
69.12 Continuing exemptions.

Subpart B—American Samoa [Reserved]

69.21 New exemptions. [Reserved]

Subpart C—Commonwealth of the Northern Mariana Islands [Reserved]

69.31 New exemptions. [Reserved]

AUTHORITY: Sec. 325, Clean Air Act, as amended (42 U.S.C. 7625–1).

SOURCE: 50 FR 25577, June 20, 1985, unless otherwise noted.

Subpart A—Guam

§ 69.11 New exemptions.

(a) Pursuant to section 325(a) of the Clean Air Act (''CAA'') and a petition submitted by the Governor of Guam (''Petition''), the Administrator of the Environmental Protection Agency (''EPA'') conditionally exempts electric generating units on Guam from certain CAA requirements.

(1) A waiver of the requirement to obtain a prevention of significant deterioration (''PSD'') permit prior to construction is granted for the electric generating units identified in the Petition as Cabras Diesel No. 1, the Tenjo project, and three 6-megawatt diesel generators to be constructed at Orote, with the following conditions:

(i) Each electric generating unit shall not be operated until a final PSD permit is issued for that unit;

(ii) Each electric generating unit shall not be operated until that unit complies with all requirements of its PSD permit, including, if necessary, retrofitting with the best available control technology (''BACT'');

(iii) The PSD application for each electric generating unit shall be deemed complete without the submittal of the required one year of on-site meteorological data, however, EPA will not issue a PSD permit to such a unit prior to submission of such data or data which the EPA finds to be an equivalent and acceptable substitute; and

(iv) If any electric generating unit covered by this paragraph is operated either prior to the issuance of a final PSD permit or without BACT equipment, that electric generating unit shall be deemed in violation of this waiver and the CAA beginning on the date of commencement of construction of that unit.

(2) A waiver of the three nonattainment area requirements (a construction ban, the use of lowest achievable emission rate control equipment, and emission offset requirements) currently applicable to the Cabras-Piti area is granted for electric generating units with the following conditions:

(i) A tower and meteorological station shall be constructed in the Cabras-Piti area by May 1, 1993;

(ii) Meteorological data shall be collected from the Cabras-Piti station which is sufficient to run air quality models both to demonstrate no current exceedences of the primary national ambient air quality standard for sulfur dioxide (''sulfur dioxide NAAQS''), as set forth at 40 CFR 50.4, and sufficient to submit a complete request for redesignation of the area to attainment;

(iii) Ambient sulfur dioxide monitors shall be installed and operated in accordance with the procedures set forth at 40 CFR part 58, the PSD air monitoring requirements, and any additional monitoring requested by EPA to verify the efficacy of the intermittent control strategy (''ICS'') of fuel switching;

(iv) Within three years from the effective date of this waiver, the Governor of Guam shall submit to the EPA a complete request that the Cabras-Piti area be redesignated to attainment for the sulfur dioxide NAAQS;

(v) Electric generating units to be constructed in the Cabras-Piti area must submit applications for PSD permits as though the area had been redesignated to attainment for the sulfur dioxide NAAQS;

(vi) The Cabras-Piti area electric generating units shall comply with the

Federal Register

Monday
August 25, 1997

Part VIII

Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–5881–8]

List of Regulated Substances and Thresholds for Accidental Release Prevention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to modify the list of regulated substances and threshold quantities authorized by section 112(r) of the Clean Air Act as amended. EPA is vacating the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. The current listing and threshold for all other regulated substances, including hydrochloric acid solutions with 37% or greater concentrations and the listing and threshold for anhydrous hydrogen chloride, are unaffected by today's rulemaking. Today's action implements, in part, a settlement agreement between EPA and the General Electric Company (GE) to resolve GE's petition for review of the rulemaking listing regulated substances and establishing thresholds under the accidental release prevention regulations.

DATES: This rule is effective August 25, 1997.

ADDRESSES: Docket: The docket for this rulemaking is A–97–28. This rule amends a final rule, the docket for which is A–91–74. The docket may be inspected between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, Waterside Mall, 401 M St., SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Chemical Engineer, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, MC 5104, 401 M St., SW, Washington, DC 20460, (202) 260–7249.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include the following types of facilities if the facility has more than the 15,000-pound threshold quantity of hydrochloric acid solutions with concentrations of less than 37% hydrogen chloride.

Category	Example of regulated entities
Chemical manufacturers.	Industrial inorganics.
Petrochemical	Plastics and resins.
Other manufacturers.	Pulp and paper mills, primary metal production, fabricated metal products, electronic and other electric equipment, transportation equipment, industrial machinery and equipment, food processors.
Wholesalers ..	Chemical distributors.
Federal sources.	Defense and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists types of entities that the EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could be affected. To determine whether your facility is affected by this action, you should carefully examine today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **For Further Information Contact** section.

The following outline is provided to aid in reading this preamble to the rule:

Table of Contents

I. Introduction and Background

A. Statutory Authority

This final rule is being issued under sections 112(r) and 301 of the Clean Air Act (Act) as amended.

B. Regulatory History

The Clean Air Act (CAA or Act), section 112(r), requires EPA to promulgate an initial list of at least 100 substances (''regulated substances'') that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. The CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations promulgated under CAA section 112(r)(7), including the requirement to develop risk management plans.

On January 31, 1994, EPA promulgated the list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations (59 FR 4478) (the ''List Rule''). This list included hydrochloric acid solutions with concentrations of 30% or greater. Such solutions were assigned a threshold quantity of 15,000 pounds. EPA subsequently promulgated a rule requiring owners and operators of stationary sources with listed substances above their threshold quantities to develop programs addressing accidental releases and to make publicly available risk management plans (''RMPs'') summarizing these programs. (61 FR 31668, June 20, 1996) (the ''RMP Rule''). For further information on these regulations, section 112(r), and related statutory provisions, see these notices. These rules can be found in 40 CFR part 68, ''Chemical Accident Prevention Provisions,'' and collectively are referred to as the accidental release prevention regulations.

C. List Rule Litigation

The General Electric Company (GE) filed a petition for judicial review of the List Rule regarding EPA's listing criteria under the List Rule, the listing of certain substances in the List Rule, the setting of threshold quantities for certain substances in particular and all regulated toxic substances generally, and the petition process for adding and deleting regulated substances to the list. Recognizing that the public's interest would best be served by settlement of all issues raised in this litigation, GE and EPA agreed to a settlement on April 7, 1997. Under the terms of the settlement agreement, on May 22, 1997 (62 FR 27992), EPA proposed to vacate the listing and related threshold for hydrochloric acid solutions with less than 37% concentrations of hydrogen chloride. EPA is today taking final action on this proposal.

II. Discussion of the Final Rule and Public Comments

Today's final rule adopts without modification the May 22, 1997 (62 FR 27992), proposal to vacate provisions of the accidental release prevention regulations that specifically address hydrochloric acid solutions with less than 37% hydrogen chloride. The basis

and purpose of this rulemaking is set out in the above referenced proposal. As discussed in the proposal, this action addresses the essential element of the dispute between EPA and GE while eliminating the collateral uncertainty that would exist about the regulatory status of the remaining chemicals if the litigation proceeded. EPA has vigorously advocated responsible accident prevention efforts by industry even before enactment of section 112(r). The Agency is concerned that prolonging this dispute may encourage owners and operators of sources who are solely concerned about regulatory compliance to defer engaging in responsible accident prevention activities. By implementing the settlement agreement with GE and by implementing the settlement agreements reached in the other two challenges to the List Rule, EPA will be able to retain on the list of regulated substances nearly all of the chemicals originally listed and eliminate uncertainty about their regulatory status. As also discussed in the proposal, the general duty clause of section 112(r)(1) and the retention on the list of solutions with concentrations of 37% or greater ensures that today's rule is protective of public health in several respects.

EPA received 11 letters commenting on the proposed rule. All of the comments were from industry and trade associations. All commenters supported vacating the listing of hydrochloric acid in concentration below 37%. Several of them specifically supported EPA's stated position that this proposal is protective of public health in several respects and that this action will eliminate uncertainty in the regulated community regarding RMP compliance for hydrochloric acid solutions.

Several commenters brought up technical issues regarding the basis for listing hydrochloric acid in aqueous solution. EPA stated in the proposed rule that it was not reopening the rulemaking record on the listing of hydrochloric acid within the range of 30% to 37%. Any technical issues related to the listing of hydrochloric acid solutions will be addressed if EPA undertakes future regulatory actions regarding such solutions. In agreeing to the settlement with GE and in this related rulemaking, EPA has not conceded or acknowledged any technical deficiencies in its original listing of HCl solutions with less than 37% concentration.

One commenter said that solutions at 37%, as well as those below 37%, should be delisted. EPA considers this issue outside the scope of the current rulemaking. The listing of solutions at 37% and above was decided in the original List Rule and was not reopened by this rulemaking; objections to the listing of 37% solutions should have been made by seeking review of the original List Rule and are now untimely. To the extent that the commenter wishes to reopen the technical merits of listing solutions that are precisely 37% HCl, EPA would address that issue along with other technical issues if EPA were to take further action on hydrochloric acid solutions.

Two commenters referred to comments submitted on the original proposal to list hydrochloric acid solution. EPA addressed comments on the proposed List Rule when it promulgated the final rule (January 31, 1994).

Several commenters questioned the accident history of hydrochloric acid solutions and stated that EPA's accident database does not support listing hydrochloric acid solutions. To the extent to which it is relevant, EPA will consider the up-to-date accident history if it takes any further regulatory actions on the listing of hydrochloric acid solutions.

One commenter stated that EPA overestimated the number of regulated sources that would not have to comply with the List rule as a result of this vacatur. EPA's estimate of 800 sources was based on preliminary, conservative assumptions that EPA used to determine that a regulatory impact analysis was not required and was not related to the basis for the proposal. The number and type of sources that are affected by a listing are irrelevant under sections 112(r)(3) and (4). The Agency recognizes that this estimate may represent a conservative picture of the effect of the rule on the regulated community.

One commenter stated his understanding that hydrochloric acid solutions of 36.94% would not be covered by the RMP rule. EPA confirms that all solutions that can be accurately measured at less than 37% are excluded.

EPA also proposed on May 22, 1997, to extend the RMP rule compliance deadline for hydrochloric acid solutions with concentrations of 30% to 37% if EPA did not take final action to vacate the hydrochloric acid listing as proposed. Because EPA is vacating the listing of such solutions by the final action today, no action is necessary on this alternative proposal. If EPA were to relist these solutions in the future, then sources would have three years from the new listing to comply with the RMP rule.

Finally, as stated in the proposal, EPA wishes to clarify that this rule will not affect in any way the listing of anhydrous hydrogen chloride. Anhydrous hydrogen chloride will retain its 5000-pound threshold. Threshold determination provisions for regulated toxic substances would apply to anhydrous hydrogen chloride. Anhydrous mixtures of hydrogen chloride would be subject to the mixture provisions for regulated toxic substances. Aqueous mixtures of hydrochloric acid would be affected to the extent that the minimum concentration cutoff would be revised.

Based on the reasons discussed above, EPA is vacating the listing in part 68 of hydrochloric acid solutions at concentrations of less than 37% (from 30% up to 37%) hydrogen chloride. Solutions of 37% or greater will not be affected by today's rule and remain on the list. In addition, EPA is vacating other provisions of the accidental release prevention regulations insofar as they apply to hydrochloric acid solutions at concentrations less than 37% hydrogen chloride. For example, the reference to ''hydrochloric acid (conc 30% or greater)'' in the toxic endpoint table for 40 CFR part 68 will be revised to refer to concentrations of 37% or greater.

III. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

IV. Required Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will not have a significant negative impact on a substantial number of small entities because it will reduce the range of hydrochloric acid solutions listed under part 68 and thus reduce the number of stationary sources subject to part 68.

C. Paperwork Reduction

This rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule will reduce the number of sources subject to part 68. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Extremely hazardous substances, Incorporation by reference, Intergovernmental relations, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 19, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

1. The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

§ 68.130 Tables 1 and 2 [Amended]

2. In § 68.130 List of substances, Table 1 is amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater).''

3. In § 68.130 List of substances, Table 2 is amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater),'' and by adding a note ''d'' between note ''c'' and ''e'' at the end of the table to read as follows:

''d Toxicity of hydrogen chloride, potential to release hydrogen chloride, and history of accidents.''

Appendix A of Part 68 [Amended]

4. Appendix A of Part 68 is amended by revising the listing in the column ''Chemical name'' from ''Hydrochloric acid (conc 30% or greater)'' to ''Hydrochloric acid (conc 37% or greater).''

[FR Doc. 97–22511 Filed 8–22–97; 8:45 am]

BILLING CODE 6560–50–P

Tuesday
January 6, 1998

Part IV

Environmental Protection Agency

40 CFR Part 68

List of Regulated Substances and Thresholds for Accidental Release Prevention; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 68

[FRL–5940–4]

RIN 2050–AE35

List of Regulated Substances and Thresholds for Accidental Release Prevention; Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is modifying the rule listing regulated substances and threshold quantities under section 112(r) of the Clean Air Act as amended. EPA is deleting the category of Division 1.1 explosives (as listed by DOT) from the list of regulated substances. Regulated flammable substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to initial processing are exempted from threshold quantity determinations, and the provision for threshold determination of flammable substances in a mixture is clarified. The definition of stationary source is modified to clarify the exemption of transportation and storage incident to transportation and to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. In addition, EPA is clarifying that the Chemical Accident Prevention Provisions do not apply to sources located on the Outer Continental Shelf. EPA believes these changes will better focus accident prevention activities on stationary sources with high hazard operations and reduce duplication with other similar requirements.

DATES: This rule is effective January 6, 1998.

ADDRESSES: Docket: The docket for this rulemaking is A–96–O8. This rule amends a final rule, the docket for which is A–91–74. The docket may be inspected between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air Docket, Room M1500, Waterside Mall, 401 M St., SW, Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Vanessa Rodriguez, Chemical Engineer, (202) 260–7913, Chemical Emergency Preparedness and Prevention Office, U.S. Environmental Protection Agency, MC–5101, 401 M St. SW, Washington, DC 20460, or the Emergency Planning and Community Right-to-Know Hotline at 1–800–424–9346.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action are those stationary sources that have more than a threshold quantity of a regulated substance in a process. Regulated categories and entities include:

Category	Examples of regulated entities
Chemical Manufacturers	Industrial organics & inorganics, paints, pharmaceuticals, adhesives, sealants, fibers.
Petrochemical	Refineries, industrial gases, plastics & resins, synthetic rubber.
Other Manufacturing	Electronics, semiconductors, paper, fabricated metals, industrial machinery, furniture, textiles.
Agriculture	Fertilizers, pesticides.
Public Sources	Drinking and waste water treatment works.
Utilities	Electric and Gas Utilities.
Others	Oil and gas exploration and production, natural gas processing, food and cold storage, propane retail, warehousing and wholesalers.
Federal Sources	Military and energy installations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table also could be affected. To determine whether a stationary source is affected by this action, carefully examine the provisions of today's notice. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

The following outline is provided to aid in reading this preamble:

Table of Contents

I. Introduction and Background

A. Statutory Authority

This final rule is being issued under sections 112(r) and 301 of the Clean Air Act (CAA or Act) as amended.

B. Regulatory History

The CAA, section 112(r), requires EPA to promulgate an initial list of at least 100 substances (''regulated substances'') that, in the event of an accidental release, are known to cause or may be reasonably expected to cause death, injury, or serious adverse effects to human health and the environment. The CAA also requires EPA to establish a threshold quantity for each chemical at the time of listing. Stationary sources that have more than a threshold quantity of a regulated substance are subject to accident prevention regulations promulgated under CAA section 112(r)(7), including the requirement to develop risk management plans.

On January 31, 1994, EPA promulgated the list of regulated substances and thresholds that identify stationary sources subject to the accidental release prevention regulations (59 FR 4478) (the ''List Rule''). The listed substances included 77 acutely toxic substances, 63 flammable gases and volatile flammable liquids, and Division 1.1 high explosive substances as listed by the United States Department of Transportation (DOT) in 49 CFR 172.101. EPA subsequently promulgated a rule requiring owners

and operators of stationary sources with listed substances above their threshold quantities to develop programs addressing accidental releases and to make publicly available risk management plans (''RMPs'') summarizing these programs (61 FR 31668, June 20, 1996) (the ''RMP Rule''). For further information on these regulations, section 112(r), and related statutory provisions, see these notices. These rules can be found in 40 CFR part 68, ''Chemical Accident Prevention Provisions,'' and collectively are referred to as the accidental release prevention regulations.

C. List Rule Litigation

The American Petroleum Institute (API) and the Institute of Makers of Explosives (IME) filed petitions for judicial review of the List Rule (American Petroleum Institute v. EPA, No. 94–1273 (D.C. Cir.) and consolidated cases). On March 28, 1996, EPA made available for public comment under CAA section 113(g) proposed settlement agreements with API and IME (61 FR 13858, March 28, 1996). Consistent with these agreements, EPA proposed amendments to the List Rule on April 15, 1996 (61 FR 16598). On June 20, 1996, EPA promulgated a stay of certain provisions of the List Rule that were affected by the proposed amendments (61 FR 31730). EPA is today taking final action on the amendments proposed in April 1996.

II. Discussion of the Final Rule and Public Comments

In this final rule, EPA is taking the following actions to amend the List Rule: delisting explosives; exempting from threshold determination regulated flammable substances in gasoline and in naturally occurring hydrocarbon mixtures prior to initial processing; clarifying the provision for threshold determination of flammable substances in mixtures to exempt mixtures that do not have a National Fire Protection Association (NFPA) flammability hazard rating of 4; modifying the definition of stationary source to clarify the exemption of transportation and storage incident to transportation and to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources; and clarifying that the chemical accident prevention provisions do not apply to sources located on the Outer Continental Shelf (''OCS sources''). These amendments were proposed on April 15, 1996. EPA received 37 letters commenting on the proposal. Major comments are discussed below. Summaries of all comments and the Agency's responses can be found in the summary and response to comments document in the docket.

A. Explosives

EPA is amending the List Rule to delete the category of high explosives from the list of regulated substances. Explosives were initially listed because of their potential to cause offsite effects from blast waves. In addition, EPA believed that there existed potential gaps in emergency planning and response communication that made risk management planning appropriate for sources with explosives. In accordance with the Settlement Agreement, IME has developed and will implement safety practices that will provide additional information and enhance the coordination between explosives facilities and the emergency planners and responders. As discussed in the preamble to the proposed rule of April 15, 1996, EPA concluded that current regulations and current and contemplated industry practices promote safety and accident prevention in storage, handling, transportation, and use of explosives. As a result, these regulations and practices adequately protect the public and the environment from the hazards of accidents involving explosives. The Agency believes these actions effectively close the remaining gap in emergency planning and response communications. Therefore, EPA is taking final action to delist explosives from the list of regulated substances under section 112(r).

EPA received six comment letters on the proposal to delist explosives. All the commenters supported EPA's proposal, citing current regulations, current and contemplated industry practices, and the regulatory burden imposed by listing explosives.

B. Regulated Flammable Substances in Gasoline and in Naturally Occurring Hydrocarbon Mixtures

EPA is taking final action to provide specific exemptions from threshold determination for regulated flammable substances in gasoline used as fuel for internal combustion engines and for regulated substances in naturally occurring hydrocarbon mixtures prior to initial processing in a petroleum refining process unit or a natural gas processing plant. These exemptions reflect EPA's original intent to exempt flammable mixtures that do not meet the criteria for a National Fire Protection Association (NFPA) flammability hazard rating of 4 and clarify the regulatory status of gasoline and naturally occurring hydrocarbon mixtures. Naturally occurring hydrocarbon mixtures would include any or any combination of the following: natural gas condensate, crude oil, field gas, and produced water. This rule includes definitions of these substances as well as definitions of natural gas processing plant and petroleum refining process unit.

EPA is making minor changes to the definitions proposed for natural gas processing plant and petroleum refining process unit. The North American Industrial Classification System (NAICS) code has been added to the definition for natural gas processing plant in this final rule. In addition, part of the proposed definition has been dropped, because it included the term being defined and, as a result, potentially could cause confusion. The NAICS code also has been added to the definition of petroleum refining process unit. The proposed definition of petroleum refining process unit included the Standard Industrial Classification (SIC) code (which is still cited in the definition); however, SIC codes have been replaced by NAICS codes.

EPA received 12 letters in support of the gasoline exemption. No comments were submitted opposing this exemption. Several of the commenters who supported the exemption also suggested broadening the exemption to include blendstocks, natural gasolines, and other fuels. Several suggestions were made for clarifying the gasoline exemption.

EPA does not believe the exemption should be broadened. Individual flammable substances that do not meet the criteria for NFPA 4 for flammability were not considered for listing as flammables in development of the list of regulated substances. Although substances such as blendstocks and natural gasoline are not specifically exempted, any flammable mixtures, including blendstocks and natural gasoline, that do not meet the criteria for an NFPA rating of 4 for flammability are exempt from threshold determination (see Clarification of Threshold Determination of Regulated Flammable Substances in Mixtures, discussed below). EPA believes that substances and mixtures that meet the criteria for NFPA 4, including blendstocks and fuels, should be covered by the rule, regardless of their use. EPA believes such substances have the same intrinsic hazards whether they are used as gasoline blendstocks, as fuels, or for other purposes. EPA's analysis indicates that risks associated with the storage and handling of flammable substances are a function of the properties of the materials, not their end use. EPA is

exempting gasoline because it does not meet the NFPA 4 criteria, and EPA believes it does not represent a significant threat to the public of vapor cloud explosions.

EPA received 16 letters supporting the exemption of naturally occurring hydrocarbons prior to initial processing. One commenter suggested modifying the exemption to incorporate site-specific factors because conditions conducive to vapor cloud explosions might exist at some facilities with exempted flammable substances, particularly in the case of oil and gas production facilities located adjacent to chemical production facilities. EPA recognizes that there may be cases where a facility may not be subject to the RMP requirements because of this exemption, but where the potential for vapor cloud explosions may exist. Neither Congress nor EPA intended the List Rule to capture every substance that may pose a hazard in particular circumstances. Instead, the statute required EPA to select the chemicals posing the greatest risk of serious effects from accidental releases. To implement these criteria, EPA focused primarily on chemicals that posed the most significant hazards because site-specific factors vary too greatly to be considered at the listing stage of regulation. EPA believes the hazards of naturally occurring hydrocarbon mixtures prior to entry into a natural gas processing plant or petroleum refining process unit do not warrant regulation. The general duty clause of section 112(r)(1) would apply when site-specific factors make an unlisted chemical extremely hazardous. Also, the particular risk cited by the commenter probably would be addressed by the RMP Rule even with the exemption as promulgated today. In the case of a chemical facility located adjacent to an oil and gas production facility, the owner or operator of the chemical facility is likely to have processes covered due to other regulated substances and would have to consider site-specific conditions such as the presence of an adjacent oil and gas production facility. Therefore, it is inappropriate to condition this exemption on site-specific factors.

C. Clarification of Threshold Determination of Regulated Flammable Substances in Mixtures

To clarify threshold determination for regulated flammable substances in mixtures, EPA is taking final action to provide that, for mixtures that have one percent or greater concentration of a regulated flammable substance, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture does not have an NFPA flammability hazard rating of 4, as defined in the NFPA Standard System for the Identification of Fire Hazards of Materials, NFPA 704–1996.

In its proposed rule, to define NFPA 4, EPA cited and proposed to incorporate by reference NFPA 704, Standard System for the Identification of Fire Hazards of Materials (1990 edition). For the definition and determination of boiling point and flash point, EPA cited and proposed to incorporate by reference NFPA 321, Standard on the Basic Classification of Flammable and Combustible Liquids (1991 edition). In this final rule, EPA is updating these references and incorporating by reference the 1996 edition of NFPA 704 and the 1996 edition of NFPA 30, Flammable and Combustible Liquids Code, which replaces NFPA 321.

Nine comments were submitted supporting this clarification. No opposing comments were submitted.

D. Definition of Stationary Source

EPA is promulgating the amendments to the definition of stationary source that were proposed on April 15, 1996. First, EPA is clarifying that the exemption for regulated substances in transportation, or in storage incident to such transportation, is not limited to pipelines. In addition, EPA is modifying the definition of stationary source to clarify that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. Finally, EPA is modifying the definition of stationary source to clarify that exempt transportation shall include, but not be limited to, transportation activities subject to regulation or oversight under 49 CFR parts 192, 193, or 195, as well as transportation subject to natural gas or hazardous liquid programs for which a state has in effect a certification under 49 U.S.C. section 60105.

EPA considers the transportation exemption to include storage fields for natural gas where gas taken from pipelines is stored during non-peak periods, to be returned to the pipelines when needed. Such storage fields include, but are not limited to, depleted oil and gas reservoirs, aquifers, mines, and caverns (e.g., salt caverns). For purposes of this regulation, this type of storage is incident to transportation and, therefore, is not subject to the RMP rule. The transportation exemption also applies to liquefied natural gas (LNG) facilities subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. section 60105. These facilities include those used to liquefy natural or synthetic gas or used to transfer, store, or vaporize LNG in conjunction with pipeline transportation.

EPA believes there still may be potential for confusion regarding the jurisdiction and regulatory responsibility of EPA and DOT for pipelines and for transportation containers at stationary sources. ''Transportation in commerce'' is defined by DOT pursuant to Federal Hazardous Materials Transportation Law (Federal HAZMAT Law, 49 U.S.C. sections 5107–5127). As a result of continued questions regarding the scope of Federal HAZMAT Law and the applicability of the regulations issued thereunder, the DOT is currently working to better delineate and more clearly define the applicability of its regulations. DOT currently contemplates clarifying its jurisdiction through the rulemaking process. As a result, there may be a future need for EPA to further amend the definition of stationary source to better comport with DOT clarifications or actions. The Agency will continue to work closely with DOT to minimize confusion regarding transportation containers and will coordinate with DOT to ensure that compatible interpretations about regulatory coverage are provided to the regulated community.

EPA received 15 letters in support of the exemption of transportation activities from the definition of stationary source. No one opposed this exemption. A number of commenters, however, believed the modifications would not eliminate overlap and confusion between EPA and DOT rules. A number of commenters also favored exempting from the stationary source definition transportation containers no longer under active shipping papers and transportation containers connected to equipment for purposes of temporary storage, loading, or unloading. Some commenters stated that EPA would be undermining DOT's authority by regulating activities that are under DOT jurisdiction. Four commenters recommended exempting all containers that are suitable for transportation.

EPA developed the transportation exemptions discussed here in consultation with DOT. EPA's regulations do not supersede or limit DOT's authorities and, therefore, are in compliance with CAA section 310. EPA believes these provisions are consistent with other EPA regulations, such as the Emergency Planning and Community

Right-to-Know Act (EPCRA) regulations under parts 355 and 370. EPA disagrees that suitability for transportation should be the criterion for determining whether a container should be considered part of the stationary source. For example, EPA believes that a railroad tank car containing a regulated substance could be considered a stationary source or part of a stationary source, even though the tank car is ''suitable for transportation.'' Such a tank car could remain at one location for a long period of time, serving as a storage container, and could pose a hazard to the community. EPA considers a container to be in transportation as long as it is attached to the motive power that delivered it to the site (e.g., a truck or locomotive). If a container remains attached to the motive power that delivered it to the site, even if a facility accepts delivery, it would be in transportation, and the contents would not be subject to threshold determination. As stated earlier, EPA will continue to work with DOT to avoid regulatory confusion.

EPA agrees with commenters who stated that active shipping papers may not be a suitable criterion for determining whether a container is in transportation. EPA is aware that shipping papers are not always generated, nor are they required under DOT rules. Therefore, EPA has modified the definition of stationary source to remove the reference to active shipping papers. EPA also has modified the definition to remove the reference to temporary storage. This reference may have been confused with storage incident to transportation.

EPA has received questions regarding the statement in the stationary source definition that properties shall not be considered contiguous solely because of a railroad or gas pipeline right-of-way. In response to these questions, EPA is clarifying this statement by deleting the word ''gas.'' EPA always intended that neither a railroad right-of-way nor any pipeline right-of-way should cause properties to be considered contiguous.

E. Applicability to Outer Continental Shelf

EPA is providing an applicability exception for sources on the outer continental shelf (OCS sources) to clarify that Part 68 does not apply to these sources. This exception is consistent with CAA section 328, which precludes the applicability of EPA CAA rules to such sources when such rules are not related to attaining or maintaining ambient air quality standards or to the ''prevention of significant deterioration'' provisions of the CAA. Eleven commenters supported this exception, and no one opposed it.

III. Summary of Revisions to the Rule

EPA is amending several sections of part 68 of title 40 of the Code of Federal Regulations.

In § 68.3, the definition of stationary source is revised. The revised definition specifically states that naturally occurring hydrocarbon reservoirs are not stationary sources or parts of stationary sources. The definition states that exempt transportation includes, but is not limited to, transportation activities subject to oversight or regulation under 49 CFR parts 192, 193, or 195, as well as transportation subject to natural gas or hazardous liquid programs for which a state has in effect a certification under 49 U.S.C. section 60105. In addition, the agency has made non-substantive wording changes to improve the clarity of this definition.

Several new definitions are added for § 68.3, for condensate, crude oil, field gas, natural gas processing plant, petroleum refining process unit, and produced water.

Section 68.10 is amended to clarify that part 68 does not apply to OCS sources.

Several revisions are made to § 68.115 on threshold determination. Section 68.115(b)(2) is modified to state that the entire weight of the mixture containing a regulated flammable substance shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture does not have an NFPA flammability hazard rating of 4. Another modification to § 68.115(b)(2) exempts from threshold determination regulated flammable substances in gasoline used as fuel in internal combustion engines. Regulated substances in naturally occurring hydrocarbon mixtures (including condensate, crude oil, field gas, and produced water), prior to entry into a natural gas processing plant or a petroleum refining process unit, also are exempt from threshold determination. Section 68.115(b)(3), on concentrations of a regulated explosive substance in a mixture, is deleted, and §§ 68.115(b)(4), 68.115(b)(5), and 68.115(b)(6) are redesignated as §§ 68.115(b)(3), 68.115(b)(4), and 68.115(b)(5), respectively.

Section 68.130 is modified by the deletion of (a), explosives listed by DOT as Division 1.1. Section 68.130(b) is redesignated as §§ 68.130(a), and §§ 68.130(c) as 68.130(b).

IV. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this final rule is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this action. Under section 307(b)(2) of the CAA, the requirements that are subject to today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

V. Required Analyses

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must judge whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal government or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and, therefore, is not subject to OMB review.

B. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant negative economic impact on a substantial number of small entities. This final rule will not have a significant negative impact on a substantial number of small entities because it reduces the number of substances that would be used to identify stationary sources for regulation and provides exemptions that will reduce the number of stationary sources subject to the accidental release prevention requirements.

C. Paperwork Reduction

This rule does not include any information collection requirements for OMB to review under the provisions of the Paperwork Reduction Act.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule will reduce the number of sources subject to part 68. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

F. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (''NTTAA''), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practice, etc.) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA developed its list of regulated flammable substances for this rule based on analysis of the hazards of flammable substances conducted in a review of the EPCRA section 302 list. As part of this analysis, EPA identified and evaluated existing listing and classification systems, including listing and classification systems developed for voluntary consensus standards. This final rule incorporates, by reference, the use of a voluntary consensus standard to identify the chemicals which are covered according to their flammability, namely NFPA 704, ''Standard System for the Identification of the Hazards of Materials for Emergency Response.'' EPA identified no other potentially applicable voluntary consensus standards.

List of Subjects in 40 CFR Part 68

Environmental protection, Chemicals, Chemical accident prevention, Clean Air Act, Extremely hazardous substances, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 18, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, subchapter C, part 68 of the Code of Federal Regulations is amended as follows:

PART 68—CHEMICAL ACCIDENT PREVENTION PROVISIONS

The authority citation for part 68 continues to read as follows:

Authority: 42 U.S.C. 7412(r), 7601(a)(1), 7661–7661f.

Subpart A—General

2. Section 68.3 is amended by adding the following definitions in alphabetical order and revising the definition of ''stationary source'' to read as follows:

§ 68.3 Definitions.

* * * * *

Condensate means hydrocarbon liquid separated from natural gas that condenses due to changes in temperature, pressure, or both, and remains liquid at standard conditions.

* * * * *

Crude oil means any naturally occurring, unrefined petroleum liquid.

* * * * *

Field gas means gas extracted from a production well before the gas enters a natural gas processing plant.

* * * * *

Natural gas processing plant (gas plant) means any processing site engaged in the extraction of natural gas liquids from field gas, fractionation of mixed natural gas liquids to natural gas products, or both, classified as North American Industrial Classification System (NAICS) code 211112 (previously Standard Industrial Classification (SIC) code 1321).

* * * * *

Petroleum refining process unit means a process unit used in an establishment primarily engaged in petroleum refining as defined in NAICS code 32411 for petroleum refining (formerly SIC code 2911) and used for the following: Producing transportation fuels (such as gasoline, diesel fuels, and jet fuels), heating fuels (such as kerosene, fuel gas distillate, and fuel oils), or lubricants; Separating petroleum; or Separating, cracking, reacting, or reforming intermediate petroleum streams. Examples of such units include, but are not limited to, petroleum based solvent units, alkylation units, catalytic hydrotreating, catalytic hydrorefining, catalytic hydrocracking, catalytic reforming, catalytic cracking, crude distillation, lube oil processing,

hydrogen production, isomerization, polymerization, thermal processes, and blending, sweetening, and treating processes. Petroleum refining process units include sulfur plants.

* * * * *

Produced water means water extracted from the earth from an oil or natural gas production well, or that is separated from oil or natural gas after extraction.

* * * * *

Stationary source means any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur. The term stationary source does not apply to transportation, including storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this part. A stationary source includes transportation containers used for storage not incident to transportation and transportation containers connected to equipment at a stationary source for loading or unloading. Transportation includes, but is not limited to, transportation subject to oversight or regulation under 49 CFR parts 192, 193, or 195, or a state natural gas or hazardous liquid program for which the state has in effect a certification to DOT under 49 U.S.C. section 60105. A stationary source does not include naturally occurring hydrocarbon reservoirs. Properties shall not be considered contiguous solely because of a railroad or pipeline right-of-way.

* * * * *

3. Section 68.10 is amended by adding a paragraph (f) to read as follows:

§ 68.10 Applicability.

* * * * *

(f) The provisions of this part shall not apply to an Outer Continental Shelf (''OCS'') source, as defined in 40 CFR 55.2.

Subpart F—Regulated Substances for Accidental Release Prevention

4. Section 68.115 is amended by revising paragraph (b) introductory text and paragraph (b)(2); removing paragraph (b)(3); and by redesignating paragraphs (b)(4) through (b)(6) as (b)(3) through (b)(5) to read as follows:

§ 68.115 Threshold determination.

* * * * *

(b) For the purposes of determining whether more than a threshold quantity of a regulated substance is present at the stationary source, the following exemptions apply:

* * * * *

(2) *Concentrations of a regulated flammable substance in a mixture.* (i) *General provision.* If a regulated substance is present in a mixture and the concentration of the substance is below one percent by weight of the mixture, the mixture need not be considered when determining whether more than a threshold quantity of the regulated substance is present at the stationary source. Except as provided in paragraph (b)(2) (ii) and (iii) of this section, if the concentration of the substance is one percent or greater by weight of the mixture, then, for purposes of determining whether a threshold quantity is present at the stationary source, the entire weight of the mixture shall be treated as the regulated substance unless the owner or operator can demonstrate that the mixture itself does not have a National Fire Protection Association flammability hazard rating of 4. The demonstration shall be in accordance with the definition of flammability hazard rating 4 in the NFPA 704, Standard System for the Identification of the Hazards of Materials for Emergency Response, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A–96–O8, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. Boiling point and flash point shall be defined and determined in accordance with NFPA 30, Flammable and Combustible Liquids Code, National Fire Protection Association, Quincy, MA, 1996. Available from the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269–9101. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Environmental Protection Agency Air Docket (6102), Attn: Docket No. A–96–O8, Waterside Mall, 401 M. St. SW., Washington D.C.; or at the Office of Federal Register at 800 North Capitol St., NW, Suite 700, Washington, D.C. The owner or operator shall document the National Fire Protection Association flammability hazard rating.

(ii) *Gasoline.* Regulated substances in gasoline, when in distribution or related storage for use as fuel for internal combustion engines, need not be considered when determining whether more than a threshold quantity is present at a stationary source.

(iii) *Naturally occurring hydrocarbon mixtures.* Prior to entry into a natural gas processing plant or a petroleum refining process unit, regulated substances in naturally occurring hydrocarbon mixtures need not be considered when determining whether more than a threshold quantity is present at a stationary source. Naturally occurring hydrocarbon mixtures include any combination of the following: condensate, crude oil, field gas, and produced water, each as defined in § 68.3 of this part.

* * * * *

§ 68.130 [Amended]

5. Section 68.130 is amended by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragrpahs (a) and (b). The tables to the section remain unchanged.

[FR Doc. 98–267 Filed 1–5–98; 8:45 am]
BILLING CODE 6560–50–P